

**THE TOWN OF WEARE, NH
ZONING ORDINANCE**

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TABLE OF CONTENTS

<u>ARTICLE</u>	<u>PAGE</u>
1.1 PREAMBLE	1
1.2 TITLE	1
2.1 ZONING DISTRICTS	1
2.2 ZONING MAP	1
2.3 INTERPRETATION OF BOUNDARY LINES	1
3.1 GENERAL PROVISIONS	1
3.2 PERFORMANCE STANDARDS	1
3.3 CONFLICT WITH OTHER REGULATIONS OR ORDINANCE	2
3.4 NONCONFORMING USE OF PROPERTY	2
3.5 NONCONFORMING LOTS	2
3.6 LOTS WITHOUT PUBLIC SEWAGE	2
3.7 HEIGHT	2
3.8 NUCLEAR, CHEMICAL, OR TOXIC WASTE	3
3.9 ESTABLISHING NEW JUNKYARDS	3
3.10 ASSIGNMENT OF SECTION NUMBERS	3
4.1 DEFINITIONS	3
5.1 ADMINISTRATION AND ENFORCEMENT	7
5.1.1 DUTY	7
5.1.2 VIOLATION PENALTIES	7
6.1 ZONING BOARD OF ADJUSTMENT	8
6.1.1 CREATION	8
6.1.2 ADOPTION OF RULES	8
6.1.3 INTERPRETATIONS	8
6.1.4 SPECIAL EXCEPTIONS	8
6.1.5 VARIANCE	8
6.1.8 PROCEDURE	9
7.1 AMENDMENTS	9
8.1 NOTICE OF VIOLATION	10
9.1 PENALTY & ENFORCEMENT	10

10.1	SAVING CLAUSE	10
11.1	WHEN EFFECTIVE	10
12.1	TITLE AND PURPOSE	10
12.1.1	TITLE	10
12.1.2	PURPOSE	10
13.1	ZONING DISTRICTS	11
13.1.1	RESIDENTIAL	11
13.1.2	RURAL/AGRICULTURAL (RA)	11
13.1.3	VILLAGE (V)	11
13.1.4	RESIDENTIAL MANUFACTURED HOUSING (MH)	11
13.1.5	COMMERCIAL (C)	11
13.1.6	INDUSTRIAL (I)	11
14.1	LOT SIZE REGULATIONS	11
14.2	MINIMUM LOT SIZE TABLE 1-1	11
15.1	PHASING OF DEVELOPMENT	12
15.1.1	PURPOSE	12
16.1	BONA FIDE GIFTS	12
17.1	PERMITTED USES AND RESTRICTIONS	13
17.2	RESIDENTIAL (R) DISTRICT	13
17.3	RURAL/AGRICULTURAL (RA) DISTRICT	13
18.1	SETBACKS/FRONTAGE/PARKING IN R AND RA DISTRICTS	14
18.2	SETBACKS AND FRONTAGE	14
18.3	PARKING: R AND RA DISTRICTS	15
19.1	SPECIAL EXCEPTIONS	15
20.1	ESTABLISHMENT OF PRIVATELY OWNED GRAVEYARDS, BURIAL SITES AND CEMETERIES	17
20.2	PURPOSE	17
20.3	LOCATION OF BURIAL SITE	17
20.4	ESTABLISHMENT	17
20.5	MAINTENANCE	17
21.1	SIGNS AND SIGNING IN R AND RA DISTRICTS	17
22.1	VILLAGE DISTRICTS	18
22.2	PURPOSE	18

22.3	DESIGNATED VILLAGE DISTRICTS	18
22.4	PERMITTED USES	18
22.5	AREA REQUIREMENTS	18
22.6	YARD REQUIREMENTS	18
22.7	SIGNS	19
22.8	NON-PERMITTED USES	19
23.1	RESIDENTIAL MANUFACTURED HOUSING DISTRICT	19
23.2	PURPOSE	19
23.3	PERMITTED USES	19
23.4	MANUFACTURED HOUSING PARKS	19
24.1	COMMERCIAL ZONING DISTRICT	20
24.2	PURPOSE	20
24.3	PERMITTED USES	20
24.4	SPECIAL EXCEPTIONS	21
24.5	AREA AND FRONTAGE REQUIREMENTS	21
24.6	YARD REQUIREMENTS	21
24.7	BUFFER STRIPS	22
24.8	OFF-STREET PARKING	22
24.9	SIGNS	22
24.10	NON-PERMITTED USES	22
25.1	INDUSTRIAL ZONING DISTRICT	23
25.2	PURPOSE	23
25.3	PERMITTED USES	23
25.4	NON-PERMITTED USES	23
25.5	AREA AND FRONTAGE REQUIREMENTS	24
25.6	YARD REQUIREMENTS	24
25.7	BUFFER STRIPS	24
25.8	OFF-STREET PARKING	24
25.9	SIGNS	24
26.1	MULTI-FAMILY HOUSING	25
26.2	PURPOSE AND INTENT	25
27.1	CLUSTER HOUSING	26
27.2	PURPOSE AND INTENT	26
27.3	REQUIREMENTS	26
28.1	WETLANDS ZONE LAND PLANNING ORDINANCE	27
28.2	PURPOSE AND INTENT	27
28.3	WETLANDS DEFINED	28
28.4	EXAMPLES OF WETLANDS	28
28.5	WETLAND ZONE BOUNDARIES	28
28.5.1	DISPUTED BOUNDARIES	28

28.5.2	(REPEALED MARCH 1995 VOTE)	28
28.5.3	WETLANDS INCORRECTLY DELINEATED	28
28.5.4	RELATION TO OTHER ZONES	28
28.6	PERMITTED USES	28
28.7	SPECIAL EXCEPTIONS	29
28.8	SETBACKS	29
29.1	AQUIFER PROTECTION ORDINANCE	29
29.2	PURPOSE	29
29.3	LOCATION	30
29.4	RECHARGE AREAS	30
29.5	DEFINITIONS	30
29.6	APPEALS	32
29.7	USE REGULATIONS	32
29.7.2	MAXIMUM LOT COVERAGE	32
29.8	PROHIBITED USES	32
29.9	PERMITTED USES	32
29.10	SPECIAL EXCEPTIONS	33
29.11	CONDITIONAL USES	33
29.12	SEPTIC SYSTEM DESIGN AND INSTALLATION	34
29.13	ADDITIONAL GUIDELINES	34
30.1	RURAL CONSERVATION OVERLAY DISTRICT	34
30.2	PURPOSE AND INTENT	34
30.3	PERMITTED USES	35
30.4	AREA REQUIREMENTS	35
30-A	MT. DEARBORN ROAD HISTORIC AREA OVERLAY DISTRICT	35
31.1	FLOODPLAIN DEVELOPMENT REGULATIONS	36
31.2	APPLICABILITY	36
31.3	DEFINITIONS	37
31.4	PERMIT REQUIRED	40
31.5	PERMIT PROVISIONS	40
31.6	WATER SUPPLY AND WASTEWATER DISPOSAL	41
31.7	ELEVATIONS AND FLOODPROOFING	41
31.8	BUILDING PERMIT TO BE WITHHELD	41
31.9	ALTERED OR RELOCATED WATERCOURSES	41
31.10	BUILDING PROVISIONS	42
31.11	VARIANCES AND APPEALS	43
32.0	WIRELESS TELECOMMUNICATIONS FACILITY OVERLAY DISTRICT	44
32.1	PURPOSE AND INTENT	44
32.2	APPLICABILITY	44
32.2.1	AMATEUR RADIO: RECEIVE-ONLY ANTENNAS	44

32.2.2	ESSENTIAL SERVICES AND PUBLIC UTILITIES	45
32.3	DEFINITIONS	45
32.4	DISTRICT REGULATIONS	46
32.4.1	LOCATION	46
32.4.2	EXISTING STRUCTURES: POLICY	46
32.4.3	EXISTING STRUCTURES: BURDEN OF PROOF	46
32.4.4	GROUND-MOUNTED FACILITIES: POLICY	47
32.5	USE REGULATION	47
32.5.1	EXISTING TOWER STRUCTURES	47
32.5.2	RECONSTRUCTION OF EXISTING TOWER STRUCTURES	47
32.5.3	EXISTING STRUCTURES	47
32.5.4	GROUND-MOUNTED FACILITY	48
32.6	DIMENSIONAL REQUIREMENTS	48
32.6.1	HEIGHT, MAXIMUM	48
32.6.2	HEIGHT, EXISTING STRUCTURES AND UTILITY POLES	48
32.6.3	HEIGHT, OTHER EXISTING STRUCTURES	48
32.6.4	SETBACKS	48
32.6.5	FALL ZONE FOR GROUND MOUNTS	48
32.7	PERFORMANCE AND DESIGN STANDARDS	48
32.7.1	VISIBILITY	49
32.7.2	COLOR	50
32.7.3	EQUIPMENT SHELTERS	50
32.7.4	LIGHTING, SIGNAGE AND SECURITY	50
32.7.5	SCENIC LANDSCAPES AND VISTAS	50
32.7.6	DRIVEWAYS	50
32.7.7	ANTENNA TYPES	50
32.7.8	GROUND AND ROOF MOUNTS	51
32.7.9	RADIO FREQUENCY RADIATION (RFR) STANDARDS	51
32.8	MONITORING AND MAINTENANCE	51
32.8.1	MAINTENANCE	51
32.8.2	MONITORING	51
32.8.3	SECURITY FOR REMOVAL	51
32.9	ABANDONMENT OR DISCONTINUATION OF USE	51
32.9.1	NOTIFICATION	51
32.9.2	REMOVAL	52
32.9.3	FAILURE TO REMOVE	52
32.10	ADMINISTRATION AND ENFORCEMENT	52

Interim Growth Management Ordinance

Section I – Title

This ordinance shall be known and may be cited as the Interim Growth Management Ordinance of the Town of Weare, New Hampshire.

Section II – Authority

This Interim Growth Management Ordinance is enacted pursuant to the authority granted under RSA 674:23.

Section III – Purpose

This interim regulation is adopted to promote and ensure the orderly development of land within the Town of Weare; to promote public health, safety and welfare of its residents; and for the following specific purposes:

- A. To provide the Town of Weare adequate time to complete the update of the Master Plan, Capital Improvements Plan and develop new zoning ordinances that reflect the Master Plan and propose long term growth management ordinances that would replace this temporary ordinance in 2005 so that the Town can effectively manage its growth.
- B. To permit the opportunity for reasoned public debate on desired Growth Management Ordinance and/or Impact Fee Ordinance, and Zoning Ordinance revisions.
- C. To ensure, for the existing and future population of the Town of Weare, that essential municipal services, such as school, transportation/roads, clean water are available and will have sufficient capacity and quality to accommodate new development.

Section IV – Findings of Fact

- A. Between 1950 and 1960 Weare grew at a relatively modest rate of 5.6%. Between 1970 and 1980, Weare's population increased nearly 75%. Between 1980 and 1990, the Town's population increased 91.6%. Between 1990 and 2000, Weare's population increased 25.6%.
- B. Weare's 2000 population (according to the US Census) of 7,776 represents a 25.6% increase since 1990. This compares to an overall growth rate of 13.4% for Hillsborough County and 14.9% for the Southern NH Planning region over the same period.
- C. According to the US Census Bureau, the Town of Weare is ranked 44th among all the 275 municipalities within New Hampshire in terms of total population size (7,776), total number of housing units (2,828), total land area (59.89 square miles), population density per square mile (132.1), and housing unit density per square mile (48.1).
- D. Weare has been growing at a rate of between 2.6% and 2.9% per year between 2000 and 2002. Applying this rate of growth forward, it can be estimated that Weare's population would equal approximately 10,200 people by the year 2010, which is a 31% increase in population for the ten year period.
- E. As of November 2003, the Town of Weare has an inventory of 998 vacant housing lots.
- F. The Weare road network and infrastructure is nearing capacity. Severe congestion occurs along the Route 114, East Street and Flanders Memorial Road intersection; Reservoir Drive, Route 77 and Route 114 intersection; as well as the

- Center Road and Route 114 intersection, particularly during school hours and school functions.
- G. As of October 2003, the Town of Weare has 2,129 students enrolled in its school systems (264 students are from Henniker).
 - H. In 1993-1994 Weare's enrollment in Grades 1 through 8 was 908 students and in 2003-2004 the enrollment was 1255 students, which represents a 38.2% increase in the ten year period.
 - I. In 1993-1994 Weare enrollment in John Stark High School was 402 students and in 2003-2004 the enrollment was 608 students, which represents a 51.2% increase.
 - J. The total capacity of the Center Woods Elementary School system (Grades P-4) is approximately 581; the total school enrollment for the 2003 school year is 651, which exceeds the school's design capacity by 70 students. The Weare Middle School system (Grades 5-8) has a total capacity of 548; the total school enrollment for 2003 school year is 606, which exceeds the design capacity by 58 students. The John Stark Regional High School (Grades 9-12) has a total capacity of 1,269; the total school enrollment for 2003 school year is 872 (of which 264 students are from Henniker).
 - K. Improvements to the Weare School System buildings in the last 10 years include construction of a two story four-room kindergarten addition to the Center Woods Elementary School and a 10,000 square foot addition to the John Stark Regional High School. Many other improvements and expansions have taken place at all 3 Weare school to address issues of health and overcrowding.
 - L. The Weare School Board commissioned a study of the Weare Middle School in 2003 which concluded that the school is deficient in many capacities, most notably in overcrowding and providing a healthy environment.
 - M. The Weare Planning Board approved 29 new residential lots in 2000, 10 new residential lots in 2001 and 47 new residential lots in 2002. In 2003, the Planning Board has received applications for the creation of 251 new residential lots. The sharp increase in residential subdivision applications has impeded the Planning Board from carrying out its obligation of preparing a new Master Plan and Capital Improvements Program. The Board has been further impeded in its efforts to develop a reasonable growth management process.

Section V – Enactment

The Town of Weare Planning Board or Zoning Board of Adjustment shall not formally accept or act upon any site plan applications for single family housing, multi-family housing, mobile home parks or condominiums proposed pursuant to the New Hampshire Condominium Act, RSA 356-B1 to RSA 356-B69, or any major subdivision applications, defined in the Weare Zoning Ordinance as a subdivision creating a total of more than 3 lots, until the expiration of this interim regulation. For the purpose of this interim regulation, multi-family is defined as: "a building designed for, or used as, three or more dwelling units". This interim regulation shall apply to any subdivision or site plan applications for single family housing, multi-family housing, mobile home parks, or for any subdivision of land for residential purposes on any land located within the Town of Weare formally accepted by the Planning Board after the effective date of this interim regulation.

The number of building permits issued for new dwelling units by the Town of Weare during the term of this ordinance shall be 60. This number represents the average number of building permits issued for dwelling units over the last 10 years.

In order to assure equitable distribution of available permits, no single individual, partnership, corporation or other entity shall be issued permits for more than 5 new dwelling units during a calendar year. This limitation shall not apply to any subdivision with a phasing plan approved by the Planning Board prior to the first legal notice of this ordinance. Building permits for new dwellings in a phased development above the maximum of 5 per single individual, partnership, corporation or other entity shall not count towards the maximum of 60 permits during the term of this ordinance.

Notwithstanding the aforementioned distribution policy, at least 20 (1/3 of the permits) of the 60 permits to be issued for new dwelling units shall be awarded to landowners whose building will be their permanent residence.

After December 1, surplus permits may be issued to such individuals, partnerships, corporations or other entities who have already been issued the maximum 5 permits if there is no other qualified applicant.

Section VI – Expiration

This interim ordinance shall remain in effect for a period of one year from the date of enactment.

The Town of Weare may repeal this interim regulation sooner than the expiration date if, in its judgment and after appropriate public hearings, the unusual circumstances requiring its enactment no longer apply and its repeal is justified.

Section VII – Pending Applications

The provisions of this interim ordinance shall not apply to any plan or application which has been formally accepted by the Planning Board prior to the first legal notice of the first public hearing on this proposed interim ordinance.

Section VIII – Conflicts

Where any provision of this interim regulation imposes restrictions different from those imposed by any other provision of ordinances of the Town of Weare, or any other rule or regulation or other provision of the law, whichever provision is more restrictive or imposes higher standards shall control.

Section IX – Separability

If any provision of this interim ordinance or the application thereof to any person or circumstances is adjudged invalid by a court or competent jurisdiction, such judgment shall not affect or impair the validity of the remainder of this interim regulation of the application thereof to other persons or circumstances.

Section X – Amendments

This interim ordinance may be amended by the Town of Weare after a public hearing on said amendments in accordance with procedures set forth in RSA 674:23.

Section XI – Effective Date

The effective date of this interim ordinance shall be upon passage at Town meeting.

ARTICLE 1

- 1.1 **PREAMBLE:** In pursuance of authority conferred by Title LXIV, Chapter 672 to 677 NH Revised Statutes Annotated, 1955, and within the framework established by the Master Plan for the Town of Weare, NH, this ordinance shall be for the purpose of promoting the public health, general growth, safety and general welfare, and is hereby enacted by the voters of the Town of Weare, New Hampshire.
- 1.2 **TITLE:** This ordinance shall be known and may be referred to as the Town of Weare Zoning Ordinance.

ARTICLE 2

- 2.1 **ZONING DISTRICTS:** For the purpose of this Ordinance, the Town of Weare is divided in the following seven (7) Zoning Districts:
1. Village (V)
 2. Residential (R)
 3. Rural Agricultural (RA)
 4. Commercial (C)
 5. Industrial (I)
 6. Wetlands (W)
 7. Residential Manufactured Housing (MH)
- 2.2 **ZONING MAP:** The zoning districts provided in Section 2.1, "Zoning Districts" shall be bound as shown on the map entitled Zoning Map of the Town of Weare, NH dated January, 1988. All amendments and explanatory matter thereon is declared to be part of this ordinance.
- 2.3 **INTERPRETATION OF BOUNDARY LINES:** The Zoning District boundary lines as shown on this zoning map shall parallel the center lines of any road, street, other public right-of-way, the middle of a channel with respect to waterways and railroad lines.

ARTICLE 3

- 3.1 **GENERAL PROVISIONS:** The general provisions of this article shall apply to all uses of land hereinafter set forth in this ordinance.
- 3.1.1 Any 'lot' or 'lot of record' as those terms are defined herein, may be used for any one permitted use identified herein the district regulations. Only one non-accessory use shall be permitted on any one 'lot' or 'lot of record' at any given time.
- 3.2 **PERFORMANCE STANDARDS:** Any use of land shall not be obnoxious, offensive, or injurious to the public health and safety or the comfort, peace and quiet enjoyment of the community or neighborhood, or cause, disturbance or annoyance because of vibration, noise, smoke, fumes, glare, odor, dust, gas fumes, chemicals, radiation or other waste materials, or by reason of danger

of fire or explosion, or result in reduction of property values in the neighborhood.

- 3.3 CONFLICT WITH OTHER REGULATIONS OR ORDINANCE: Where any provision of this ordinance is in conflict with State law or local regulation, the more stringent provision shall apply.

3.4 NONCONFORMING USE OF PROPERTY:

- 3.4.1 This zoning ordinance shall not apply to any existing structures or to any existing use of any building in the Town of Weare, in existence on the date of the adoption of this ordinance. This zoning ordinance shall apply to any alternation of a building for use for a purpose or in a manner which is substantially different from the use to which it was put before alteration.

- 3.4.2 When any existing nonconforming use of land or buildings has been destroyed or discontinued for two (2) years, the land, structures, and buildings shall thereafter be used only in conformity to this ordinance, except that the Zoning Board of Adjustment, after a public hearing, may permit the resumption of said nonconforming use.

- 3.5 NONCONFORMING LOTS: Notwithstanding the minimum lot area requirement set forth in Table 1-1 of this ordinance, a single-family residence may be constructed on a lot which does not comply with the said requirements, provided;

- 3.5.1 It shall meet the setback requirements as nearly as possible, however it shall at least comply with the following yard setback requirements: front - 30 feet, side - 15 feet, and rear - 15 feet; distance from septic system to surface waters and wetlands - 75 feet; and

- 3.5.2 It shall have at least 50 feet of frontage.

- 3.5.3 Such lot shall either (a) have been held under separate ownership from the adjacent lots at the effective date of this ordinance, or (b) have been shown to be a separate and distinct numbered lot of record at the effective date of this ordinance by a plan of lots which has been recorded.

3.6 LOTS WITHOUT PUBLIC SEWERAGE

- 3.6.1 Notwithstanding compliance of any lot with the requirements set forth in this ordinance, no residence or business shall be constructed on any lot which is not served by public sewerage facilities unless private sewage disposal system absorption area requirements can be and are met to the satisfaction of the Building Inspector, said area requirements to be determined by the Building Inspector in accordance with the requirements set forth by the NH Water Supply and Pollution Control Division.

- 3.6.2 Where state law or regulations vest authority to some agency or government other than the Zoning Board of Adjustment that board shall have concurrent jurisdiction.

- 3.7 HEIGHT: Buildings shall have a maximum height of thirty (30) feet above the lowest finish grade as measured to the eaves, and shall contain no more than three (3) stories of heated living

space.

- 3.8 NUCLEAR, CHEMICAL, OR TOXIC WASTE: No site shall be located for the purposes of burying, storing or disposing of low-level or high-level nuclear, chemical or toxic waste.
- 3.9 ESTABLISHING NEW JUNKYARDS: Junkyards shall not be a permitted use in any zoning district in the Town of Weare.
- 3.10 ASSIGNMENT OF SECTION NUMBERS: The Planning Board has the authority to assign such section numbers to the Zoning Ordinance as it may deem appropriate provided that no substantive change to the ordinance shall occur as a result of this renumbering.

ARTICLE 4

4.1 DEFINITIONS

ABANDONMENT: Shall mean total neglect of the use of any property for a period of two years or longer.

ABUTTER: Shall mean any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board.

ACCESSORY USE: Shall mean a building or structure that is incidental and subordinate to the permitted use on a lot and used for purposes customarily associated with the primary use of the lot. Heliports or airports shall not be considered accessory uses to any use permitted in any zoning district in the Town of Weare.

ALTERATIONS: Shall mean structural change or rearrangement in the walls, roof, ceiling, floor, beams, columns, exterior architectural features and exit facilities; alterations include the movement of any building except manufactured homes and trailers from one location to another.

APPLICANT: Shall mean any individual, group of individuals, corporation, partnership, association, or any other organization of persons including state and local governments and agencies thereof desiring to construct, assemble or erect any structure for residential, commercial, agricultural, religious, or other purpose anywhere within the Town of Weare.

BONA FIDE GIFT: The conveyance of subdivided parcel of property in accordance with Article 16 of this ordinance.

BUILDING: Shall mean the structure having a roof, and intended for the shelter, housing, or enclosure of person, animal, and chattel.

BUILDING INSPECTOR: Shall be a person appointed by the Selectmen to fulfill the duties as outlined herein, including inspection of buildings, building sites, and the issuance of building

permits, pursuant to RSA 673:1 as amended and the Town of Weare Building Code.

BUILDING SITE: Shall mean that portion of a lot, tract, or parcel of land upon which a building is placed.

CAMPGROUND: Shall mean a use as defined and regulated under RSA 216-I:1-14 upon which a building is placed.

CLUSTER HOUSING: Shall mean a residential configuration of a tract of land, where a number of housing units are "clustered" on a lot or lots with alternative requirements for frontages and setbacks. The remaining area in the tract, not built upon, is reserved for a common area.

COMMERCIAL: Shall mean the buying and selling of goods, commodities, or services for the exchange of a monetary value.

COMMON DRIVEWAY: Shall mean the access to no more than two (2) lots. All common driveways must be approved by the Planning Board.

CONDOMINIUM: Shall mean individual ownership in a fee simple of one-family unit in a multi-family structure coupled with the ownership of an undivided interest in the land and in all other parts of the structure held in common with all of the other owners of one-family units.

DAMAGED STRUCTURES: Shall mean structures whose exterior appearance is altered or defaced by reason of vandalism, fire or other acts of nature.

DAY CARE CENTER: Shall mean a facility caring for four or more children and licensed by the State of New Hampshire.

DEVELOPMENT: Shall mean any manmade change to improved or unimproved real estate, including, but not limited to buildings or other structures, mining, dredging, filling, grading, paving, or excavation.

DRIVEWAYS: Shall mean any access to a lot, tract or parcel of land. Driveways must be located on the frontage that was used to determine the minimum lot size. Driveways must be constructed 30' wide where it meets the traveled way, tapered back to 18' within 8' from the edge of traveled way, with a 2% slope away from the road. All driveways shall have a maximum 10% grade unless otherwise approved by the Planning Board. Any driveway entering a paved road must have an apron paved 8' from edge of pavement. Mailbox locations must be placed with the face of the mailbox no closer than 4' from the edge of the traveled way.

DWELLING ACCESSORY ATTACHED APARTMENT: An accessory dwelling unit, consisting of not more than six hundred fifty square feet constructed within or attached to a single detached residence. Accessory attached apartments may be granted by a special exception from the Zoning Board of Adjustment.

DWELLING UNIT: Any room, or rooms connected together forming a habitable unit for one family with its own bathing and toilet facilities and its own living, eating and sleeping areas wholly within such rooms, or rooms connected together.

EARTH PRODUCTS: Shall mean sand, gravel, rock, soil or construction aggregate.

EXCAVATIONS: Shall mean a land area, including all slopes, which is used, or has been used, for the commercial taking of earth products.

ENGINEERS: Shall mean the Town Engineer of the Town of Weare, New Hampshire or a person acting in that capacity.

FINAL PLAT: Shall mean a plat or plan approved by the Planning Board pursuant to the provisions of RSA 676:4 and all subdivision and site plan regulations adopted by the Planning Board which has been recorded at the Hillsborough County Registry of Deeds.

FRONTAGE: Shall mean that portion of a lot bordering on a Town road or street as herein defined. Where a proposed lot fronts on a dead-end road, the width of the roadway at the end shall not be calculated as legal frontage. Where a proposed lot fronts in part on a turnaround, only the width of the turnaround right-of-way (50 feet) shall be calculated as frontage. (See Appendix of Subdivision Regulations for diagrams of frontage requirements.)

HOME-BASE BUSINESSES OR HOME OCCUPATION: Shall mean any legal use which is carried on entirely within a dwelling and occupying no more than 25% or 500 square feet, whichever is less, of the individual's primary dwelling.

HOME PRODUCE: Shall mean and include everything of an agricultural nature, grown and produced.

HOME SHOP: Home shop such as electrician, plumber, or similar tradesman shop which shall be shown to be of such character as to not require outside storage visible to the surrounding properties and shall not be a source of nuisance to neighbors by reason of noise, dust, glare, traffic, vibration, and/or other disruptive influence, and which employs no more than two individuals who are outside of the family.

HOTEL, TOURIST COURT, TOURIST HOME, INN, MOTEL AND CABIN: Shall mean any building or portion thereof where lodging or food is offered to transients for compensation.

INDUSTRY: Shall mean any building or land area in which permitted industrial operations or manufacturing, processing, assembly, packaging, finishing, treating, or compounding take place.

JUNK: Shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled or wrecked automobiles, or parts thereof, iron steel and other old scrap ferrous or nonferrous material.

KENNEL: Shall mean a building or land used for the commercial boarding or breeding four or more dogs.

LOT: Shall mean a parcel of land at least sufficient in size to meet the minimum requirements of this ordinance for use, coverage, and area and to provide required yard, setbacks, and open space. Newly created lots shall be four sided and rectangular in shape unless extenuating circumstances, such as existing lot lines or similar conditions require it to be different.

LOT LINE: Shall mean the property line dividing a lot from a street, right-of-way, a body of water, or adjacent property regardless of ownership.

LOT SIZE: Shall mean the total horizontal area within the boundaries of a lot, exclusive of any land designated for street or right-of-way.

LOT OF RECORD: Shall mean land designated as a separate and distinct parcel in existence upon the effective date of this ordinance in a legally recorded deed and/or plat or plan filed in the records of the Hillsborough County Registry of Deeds.

MANUFACTURED HOUSING: Shall mean any structure, transportable in one or more sections, which, in the travelling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected onsite, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, which include plumbing, heating and electrical systems contained therein. Manufactured housing as defined in this ordinance shall not include presite built housing as defined in RSA 674:31-a.

MANUFACTURED HOUSING PARK: Shall mean a parcel of land under single or common ownership or control, which contains or is designed, laid out or adapted to accommodate two (2) or more units of manufactured housing, placed and connected for use as dwelling units.

MASTER PLAN: Shall mean the comprehensive plan or plan of development for the Town as defined in RSA 674:2.

MOTOR SPORT AND RACETRACK FACILITY: Shall mean any permanent recreation facility where motorized vehicles of any kind are raced.

MULTI-FAMILY: Shall mean three or more dwelling units within a dwelling.

PARKING SPACE: Parking spaces shall measure at least 9 feet by 18 feet.

PLANNING BOARD: Shall mean the Town of Weare Planning Board.

PLAT: Shall mean a final plat or plan approved by the Weare Planning Board.

RIGHT-OF-WAY: Shall mean a legal right of passage over another person's land.

SETBACK: Shall mean the distance between the nearest portion of a building and a lot boundary

or right-of-way line, whichever one is closer.

SIGNS: Shall mean any metal, glass, wooden, plaster, stone or other sign, placed for outdoor advertising purposes on the ground or on any tree, wall, bush, rock, post, fence, building, structure.

SITE: Shall mean building site.

SITE PLAN REVIEW: Shall mean such power that may be exercised by the Weare Planning Board to approve or disapprove site plans for the development of tracts for nonresidential uses, or for multiple family dwelling units as the Planning Board may be authorized by vote of Town Meeting.

STREET: Shall mean a Class V Highway or better as defined in RSA 229:5 as may be amended from time to time.

STRUCTURE: That which is built or constructed.

SUBDIVISION: Shall mean the division of a lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, condominium conveyance, or building development.

TRAVEL TRAILER: Shall mean any vehicle or similar portable structure intended for occasional and temporary occupancy and having no foundation other than wheels, jacks, and skirting.

TOWN ROAD: Roadways that are maintained by the Town of Weare.

USE, NONCONFORMING: Shall mean a use which lawfully occupied a building or land at the time this ordinance becomes effective, and which does not conform to use regulation of the district in which it is located.

VARIANCE: Shall mean such departure from the terms of the zoning ordinance as will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.

ZONING BOARD OF ADJUSTMENT: As authorized by RSA 673:1 and RSA 673:3, the Board of Adjustment shall have such powers as are set forth in RSA 674:33, as may be amended from time to time.

ZONING MAP: Shall mean the adopted zoning map of the Town of Weare.

ARTICLE 5

5.1 ADMINISTRATION AND ENFORCEMENT

- 5.1.1 **DUTY:** It shall be the duty of the Board of Selectmen and it is hereby given power and authority to administer and enforce this ordinance. The Board of Selectmen may appoint an agent or administrator to enforce this ordinance.
- 5.1.2 **VIOLATION PENALTIES:** Reference NH RSA 673:15-17.

ARTICLE 6

6.1 ZONING BOARD OF ADJUSTMENT

- 6.1.1 **CREATION:** A Zoning Board of Adjustment consisting of five (5) members and not more than five (5) alternate members is hereby created. Its members and alternate members shall be appointed by the Board of Selectmen in accordance with the provisions of RSA 673, as may be amended. Each member of the Zoning Board of Adjustment shall be appointed for a term of three (3) years, except that the initial Board and its alternates shall be appointed as follows:
1. One member and one alternate for one year.
 2. Two members and two alternates for two years.
 3. Two members and two alternates for three years.
- 6.1.2 **ADOPTION OF RULES:** The Zoning Board of Adjustment shall adopt rules to govern its proceeding in accordance with the provisions of this ordinance and the provisions of RSA 673, as may be hereafter amended.
- 6.1.3 **INTERPRETATIONS:** The Zoning Board of Adjustment shall hear and decide appeals if it is alleged there is error in any order, requirement, decision or determination made by the Board of Selectmen or its appointed agent, in the enforcement of this ordinance.
- 6.1.4 **SPECIAL EXCEPTIONS:** The Board of Adjustment shall hear and may grant such special exceptions as are indicated by the terms of this ordinance provided that the Board finds that all of the following conditions are met:
1. The specific site is an appropriate location for such a use or uses in terms of overall community development.
 2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area.
 3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians.
 4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services.
 5. Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment.

6. A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and trees.
7. The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to insure compliance with this section.

6.1.5 VARIANCE: The Zoning Board of Adjustment shall hear and may grant variances to this or any other land use ordinances. Variance shall mean such departure from the terms of the zoning ordinance as will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. Pursuant to State law the following five (5) points of hardship must be proven by the applicant and a vote in the affirmative to warrant granting of a variance,

- a. That there **will not** be a diminution of value of surrounding properties as a result of the granting of this variance because:
- b. That the granting of this variance **will not** be contrary to the public interest because:
- c. That the enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
 - 1) As applied to the petitioner's property will interfere with the petitioner's reasonable use of their property, considering the unique setting of the property in its environment for the following reasons;
 - 2) As specifically applied to the petitioner's property has no fair and substantial relationship to the general purposes of the zoning ordinance for the zoning ordinance for the following reasons; and
 - 3) If relieved by a variance, will not injure the public or private rights of others for the following reasons;
- d. That by granting this variance, substantial justice **will** be done because:
- e. That the use contemplated by the petitioner as a result of obtaining this variance **will not** be contrary to the spirit of the ordinance because:

6.1.6 (reserved)

6.1.7 The Zoning Board of Adjustment is hereby authorized to impose reasonable fees upon an applicant for the expense of consultant services or investigative studies, review of documents, and other such matters that may be required by a particular application. Any such fees shall be subject to the provisions of RSA 673:16.

6.1.8 PROCEDURE: The Zoning Board of Adjustment shall utilize the procedures as provided for in RSA 676:5 and RSA 676:7. The board shall be required to record their findings or reasons for granting or refusing to grant a variance or special exception.

6.1.9 A variance will become void if active and substantial development of the use allowed by the variance is not undertaken within a 2 year period. Upon application by the property owner, the zoning board shall grant a one-year extension to the variance as long as circumstances have not changed to the point where the variance would no longer be warranted. There is no limit to the

number of extensions available, however the application for extension must be made prior to the expiration of the variance.

ARTICLE 7

- 7.1 **AMENDMENTS:** This ordinance may be amended in accordance with the provisions of RSA 674:16 and RSA 675:2-5 as may be amended from time to time.

ARTICLE 8

- 8.1 **NOTICE OF VIOLATION:** Upon finding that any provision of this ordinance is being violated, the Board of Selectmen or its designated agent, shall notify the violator by certified mail, return receipt requested.

ARTICLE 9

- 9.1 **PENALTY & ENFORCEMENT:** The Board of Selectmen or its designee shall enforce the provisions of this ordinance and shall recover reasonable attorney's fees as well as all other costs where they prevail. Notification of Violation shall be by Certified Mail - Return Receipt Requested. Non-conforming uses must be brought into conformity within a thirty (30) day period after notification. A penalty of two hundred seventy five dollars (\$275.00) per day will be assessed to non-conformity after the thirty (30) day period.

Any person who shall violate any provision of this ordinance shall pay a civil fine of not more than \$275.00 for each day that such violation is found by a Court to continue after the conviction date or after the date on which the violator receives written notice from the Town that he is in violation of this ordinance, whichever date is earlier.

ARTICLE 10

- 10.1 **SAVING CLAUSE:** The invalidity of any portion of this ordinance shall not affect the validity of any other provision.

ARTICLE 11

- 11.1 **WHEN EFFECTIVE:** This ordinance shall take effect immediately upon its passage.

ARTICLE 12

- 12.1 **TITLE AND PURPOSE**

- 12.1.1 **TITLE:** Residential Zoning Districts

- 12.1.2 **PURPOSE:** This section of the ordinance is designated in accordance with the Weare Master Plan as adopted by the Weare Planning Board. As designed, its purpose is to maintain the rural

character of all the residential zones within the town, yet allow for orderly growth and open spaces. This is to promote health, safety, morals, and the general welfare of the community and safeguard and protect the natural resources, environment, wetlands, and wildlife of the Town consistent with the Master Plan and all State statutes.

ARTICLE 13

13.1 **ZONING DISTRICTS**

- 13.1.1 **RESIDENTIAL (R)**: That area already under development and/or designated for the location of a structure intended solely for the dwelling of the occupants.
- 13.1.2 **RURAL/AGRICULTURAL (RA)**: That area that is a combination of residential, agricultural and undeveloped land where greater emphasis is focused on limited density and a more diverse use than strictly residential is allowed.
- 13.1.3 **VILLAGE (V)**: See Article 22.
- 13.1.4 **RESIDENTIAL MANUFACTURED HOUSING (MH)**: See Article 23.
- 13.1.5 **COMMERCIAL (C)**: See Article 24.
- 13.1.6 **INDUSTRIAL (I)**: See Article 25.

ARTICLE 14

- 14.1 **LOT SIZE REGULATIONS**: Land on Class V streets with gravel surface which are maintained by the Town, may be subdivided with a minimum lot size of 10 acres. Land on Class V streets with a paved surface shall follow the lot size table in Article 14.2.
- 14.2 This article shall apply: (a) to any use in the Residential (R) District and in the Rural/Agricultural (RA) District and (b) to any use involving housing (but excluding hotels and other housing for transients) in the Commercial (C) District and in the Industrial (I) District. The minimum lot size shall be based upon the percentage of property included in each soils/slope type shown in table 1-1. When determining lot size, the entire area used to calculate size must be non-wetland soils. For definition of wetland, see Article 28.

TABLE 1-1 FOR "MINIMUM LOT SIZE"
LOT SIZES IN SQUARE FEET

SLOPE

CLASS	SLOPE	SOIL CLASSIFICATION				
		1	2	3	4	5
AB	0-8%	84,000	93,000	102,000	97,000	144,000 (2)
C	8-15%	87,000	97,000	107,000	102,000	N/A
D	15-25%	90,000	101,000	116,000	106,000	N/A
E	25-35%	93,000	104,000	126,000	111,000	N/A

- (1) A Site Specific Soil Survey, as defined by the Hillsborough County Conservation District (HCCD) may be required for all lots in which Class 5 soil types predominate.
- (2) Where cluster, condominiums, duplex or multi family housing is proposed the requirements of Table 1-1 shall apply, for each dwelling unit. For the purposes of this section, dwelling accessory attached apartment (in-law apartment) shall not be considered a separate dwelling unit. To determine the number of permissible units the applicant shall provide a Site Specific Soil Survey and topographic map of the property. The maximum number of dwelling units shall be based on the percentage of the property included in each soil/slope type shown in TABLE 1-1. The total area of each soil type shall be divided by the minimum lot sizes shown in the Table to determine the number of dwelling units permitted for each soil type area. For purposes of calculating maximum number of dwelling units, one dwelling unit shall be permitted for each four acres of wetland district or Class 6 soils on the property.

ARTICLE 15

15.1 PHASING OF DEVELOPMENT

- 15.1.1 **PURPOSE:** The purpose of phasing development is to prevent a strain on municipal resources caused by the sudden introduction of many new dwelling units.
- 15.1.2 The Planning Board may require the phasing of future developments as required in RSA 674:21 as follows.
 1. The Planning Board may require the phasing of a development for a period up to five years for a project which is proposed to have between 4 and 75 dwelling units. The Planning Board is entitled to negotiate a longer period of phasing based on the size of the project and the potential impact of the number of units on the Town.
 2. Once phasing plan has been approved by the Planning Board, that project shall not be affected by any permit limitations subsequently enacted under the provisions of this ordinance, construction on the units in each calendar year phase. In the event that substantial construction is not undertaken in any calendar year phase, then the vesting of that phase shall be lost and the developer shall be subject to any limitations imposed by subsequently enacted provisions.

Once a phasing plan is approved by the Planning Board with dates of allowed construction in each phase, the approved plan shall be filed with the Hillsborough County Registry of Deeds bearing the signature of the Planning Board Chairman signifying approval.

ARTICLE 16

BONA FIDE GIFTS - Deleted in its entirety, per vote of March 1999

ARTICLE 17

17.1 PERMITTED USES AND RESTRICTIONS

17.1.1 No Building permits for new homes shall be issued on any Class VI or Private Road.

17.2 RESIDENTIAL (R) DISTRICT: Permitted uses.

17.2.1 Churches, municipally owned and operated educational facilities, nursing homes, golf courses, or any municipally owned and operated facility.

17.2.2 Agricultural, but excluding the grazing, care and keeping of such livestock as cows, horses, goats, pigs, and poultry as a gainful business.

17.2.3 Single and two family dwellings, detached garages, and other similar type structures, e.g. greenhouses, breezeways.

17.2.4 Home based business or home occupations including but not limited to lawyer, doctor, realtor, accountant, or notary.

17.2.5 Accessory uses or structures, and open uses of land normally incidental to the permitted principal use of the premises, except as otherwise specified.

17.2.6 Cluster housing development.

17.2.7 Lots for conservation purposes which do not meet soils, minimum lot size and/or road frontage requirements. Such lots shall be subject to deed restrictions or conservation easements, granted to the Town of Weare or a non-profit conservation organization, which limit their use to conservation purposes. Right-of-way through such lots may be permitted provided the conservation value of the lot is not diminished.

17.3 RURAL/AGRICULTURAL (RA) DISTRICT: Permitted uses.

17.3.1 Churches, municipally owned and operated educational facilities, nursing homes, golf courses, or any municipally owned and operated facility or use.

17.3.2 Agriculture, including the grazing, care and keeping of such livestock as cows, horses, goats,

pigs, and poultry as a gainful business.

- 17.3.3 Barns, sheds, or other major non-residential farm buildings and accessory structures.
- 17.3.4 Forestry and growth, harvesting and storage of forest products, tree nursery, tree farms, orchards, and similar uses including green houses, and the sale of produce and products grown on the premises.
- 17.3.5 Single and two-family dwellings, attached garages, and other similar type structures, e.g. greenhouses, breezeways.
- 17.3.6 Home shop such as electrician, plumber, or similar tradesman shop which shall be shown to be of such a character as to not require outside storage visible to the surrounding properties and shall not be a source of nuisance to neighbors by reason of noise, dust, glare, traffic, vibration, and/or other disruptive influence.
- 17.3.7 Home based business or home occupations, such as, but not limited to, lawyer, doctor, realtor, accountant or notary. Also including but not limited to beauty shop, music teacher, tailor, or other personal services.
- 17.3.8 Cluster housing development. All subdivisions or developments of more than 12 lots or dwelling units the Planning Board may require to be clustered under the requirements of Article 27.
- 17.3.9 Siting of individual manufactured housing units on individually owned lots.
- 17.3.10 Privately owned graveyards, burial sites and cemeteries. Permitted in the Rural Agricultural District only.
- 17.3.11 Lots for conservation purposes which do not meet soils, minimum lot size and/or road frontage requirements. Such lots shall be subject to deed restrictions or conservation easements, granted to the Town of Weare or a non-profit conservation organization, which limit their use to conservation purposes. Right-of-way through such lots may be permitted provided the conservation value of the lot is not diminished.

ARTICLE 18

- 18.1 **SETBACKS/FRONTAGE/PARKING IN RESIDENTIAL AND RURAL AGRICULTURAL DISTRICTS**
- 18.2 **SETBACKS AND FRONTAGE:** Includes single family and two family dwellings, manufactured housing and all structures.
- 18.2.1 Frontage: All lots less than 10 acres must have a minimum of 200 feet of frontage. All lots in excess of 10 acres must have a minimum of 50 feet of frontage on a paved Town road or 200 feet of frontage on a gravel road. Where the frontage of a proposed lot can be measured on paved and gravel road surfaces, the paved surface frontage must be at least 200 feet and the driveway entrance must be on the paved surface in order to qualify for the minimum lot size as defined in

Section 14.2. Newly proposed lots that must use some or all of the frontage on a gravel road for a minimum frontage requirement or driveway access from a gravel road will be required to have a minimum of 10 acres.

- 18.2.2 Front Setback: 50 feet from the edge of the front property line.
- 18.2.3 Sidelines: 25 feet.
- 18.2.4 Distance from septic system to drinking well water 75 feet, except when a well and/or septic system is located within Soil Type Classification 1 (highly permeable soils), where the distance shall be not less than 125 feet.
- 18.2.5 Distance from septic system to surface waters and wetland: 75 feet.
- 18.2.6 The minimum distance from a well water supply to a septic system shall be at least 75 feet. The minimum distance from a dug well water supply to jurisdictional wetlands shall be at least 75 feet. Replacement dug wells shall conform to this ordinance as nearly as practicable. There is no requirement for drilled wells to jurisdictional wetlands.
- 18.2.7 Existing The minimum distance from a building to jurisdictional wetlands shall be at least 50 feet. lots of record as of the date of the adoption of this ordinance shall be exempt from this requirement.
- 18.3 PARKING: RESIDENTIAL (R) AND RURAL/AGRICULTURAL (RA) DISTRICTS.
- 18.3.1 Off street parking only in all cases.
- 18.3.2 Single family and two family dwellings shall allow for two space per dwelling unit.

ARTICLE 19

- 19.1 SPECIAL EXCEPTIONS: The following uses will be permitted by special exception in the Residential, Rural/ Agricultural, and Village Zoning Districts according to standards set forth in Article 6.1.4, Special Exceptions, except where indicated.
- 19.1.1 Essential public utility services such as transformer stations, substations, pumping stations, or telephone exchanges where such essential public utility services are for residential purposes only.
- 19.1.2 Multi-family housing, attached or unattached. Not permitted in the Rural Agricultural District.
- 19.1.3 Seasonal homes, camps, or campgrounds, whether for private use or for rent. Not permitted in the Residential or Village Districts. Motor Sport and Race Track Facilities are not permitted in the Residential, Village and Rural Agricultural District.”

- 19.1.4 Hotel, tourist courts or home, including cabins and motels. Not permitted in the Residential or Village Districts.
- 19.1.5 Sawmills and planing mills. Not permitted in the Residential or Village Zoning Districts.
- 19.1.6 Commercial removal of sod, loam, clay, sand, or other types of soils or earth products: In addition to the other requirements of a special exception set forth in Article 6.1.4, Special Exceptions, a special exception may be granted if the Zoning Board of Adjustment further finds that the activity will be incidental to the further development of the surrounding property, as evidenced by a completed application submitted to the Planning Board for subdivision or site plan review, will not create a hazardous or unsightly condition, and meets all other requirements of the State of New Hampshire and the Town of Weare Gravel Ordinance. For the purposes of this Article, “incidental” shall mean that further development of the property cannot be conducted without the proposed commercial removal of earth products and that the commercial removal of earth products represents a minor, concurrent part of the development activity.
- 19.1.7 Food, produce or vegetable stands not to exceed five hundred (500) square feet in floor area.
- 19.1.8 Funeral homes, hospitals, private schools, and day care in excess of four children.
- 19.1.9 Private educational institutions allowed in Residential and Rural Agricultural Districts only.
- 19.1.10 One accessory attached apartment shall be permitted to single family dwelling residence in the residential zone and the rural agricultural zone by special exception from the Zoning Board of Adjustment and with these further stipulations.
 - 19.1.10.1 An accessory apartment shall be clearly incidental to the primary use of the property for single dwelling, and such accessory living space shall not exceed six hundred fifty feet.
 - 19.1.10.2 An accessory apartment shall either be constructed within or attached to a single dwelling.
 - 19.1.10.3 At least one interior connecting door or other access for persons to pass between.
 - 19.1.10.4 Septic system design/capacity shall be approved by the NH Department of Environmental Services.
 - 19.1.10.5 No new entrance or exit to an accessory apartment shall be constructed facing the front of the front of the single family dwelling.
 - 19.1.10.6 One parking space shall be provided for an accessory apartment and no new curb cut from the street shall be constructed.
 - 19.1.10.7 Exterior construction and material shall be uniform with the single dwelling.

ARTICLE 20

20.1 ESTABLISHMENT OF PRIVATELY OWNED GRAVEYARDS, BURIAL SITES AND CEMETERIES

20.2 PURPOSE: To ensure that privately owned graveyards, burial sites and cemeteries are properly and permanently identified and that the placement of same shall not result in a threat to the public health and safety.

20.3 LOCATION OF BURIAL SITE: Privately owned graveyards, cemeteries or burial sites shall not be located closer than 100 feet from the right-of-way of any highway, street or road, or closer than 100 feet from an existing dwelling house or no closer than 50 feet from a known source of water, and the location of the site shall be recorded in the deed to the property upon transfer of said property to another person (source RSA 289:2-a).

20.4 ESTABLISHMENT: Any person wishing to establish a private cemetery, graveyard or burial site shall have the proposed site surveyed by a licensed land surveyor and shall submit that survey to the Planning Board for hearing and approval. Upon approval the site shall be bounded by a fence and gate.

20.5 MAINTENANCE: In order to ensure that the maintenance of said private cemetery, graveyard or burial site does not become the responsibility of the Town of Weare, it will be necessary for the individual establishing said site to place a deposit with the Trustees of Trust Funds an amount equal to the perpetual care amount required for the purchase of lots in the town owned cemeteries. The income from said perpetual care funds will be used for the permanent maintenance of the site.

ARTICLE 21

21.1 SIGNS AND SIGNING IN (R) AND (RA) DISTRICTS: Signs for permitted uses shall not exceed six (6) square feet in surface area, cannot be internally illuminated and be no closer than one hundred (100) feet from an intersection. Any illuminator must be directed solely on said sign and not infringe on any adjoining property.

21.2 Those uses which are granted a special exception by the Zoning Board of Adjustment may have a sign, which shall not exceed thirty-two (32) square feet in surface area per side, subject to the further approval of the Zoning Board of Adjustment.

21.3 Limited to one sign per lot.

ARTICLE 22

22.1 VILLAGE DISTRICTS

22.2 PURPOSE: To maintain the distinctive, small town characteristics of the Town of Weare and to recognize and protect areas of significant or unique historical, cultural and aesthetic value from encroachment by incompatible uses, architecturally or otherwise.

22.3 DESIGNATED VILLAGE DISTRICTS

22.3.1 Riverdale.

22.3.2 Weare Center.

22.3.3 Clinton Grove.

22.3.4 Chase Village.

22.3.5 Tavern Village.

22.3.6 North Weare Village.

22.4 PERMITTED USES

22.4.1 Single family dwellings and multi-family housing where it is contained within existing structures or in new structures where the number of dwelling units per building does not exceed four (4).

22.4.2 Light commercial uses such as those listed in Article 24.3.5, except laundromats and dry cleaning facilities. Also permitted are offices, churches, schools, and the offices, meeting halls and facilities of non-profit institutions.

22.5 AREA REQUIREMENTS: The minimum lot size as set forth by the State of New Hampshire Water Supply and Pollution Control Division or other applicable regulatory agency, plus ten thousand (10,000) square feet; otherwise by Special Exception.

22.6 YARD REQUIREMENTS

22.6.1 Each structure shall be set back at least twenty-five (25) feet from the front lot line, but not less than the setback of any existing building within two hundred (200) feet of the lot, otherwise by Special Exception.

22.6.2 Each structure shall be set back at least twenty (20) feet from the side and rear lot lines, otherwise by Special Exception.

22.6.3 All non-residential uses shall provide adequate off-street parking. No parking is permitted within the front setback area or within five (5) feet of the property sideline.

22.7 SIGNS: In the Village District, the following signs shall be permitted.

22.7.1 A maximum number of two (2) signs, the total combined area of which shall not exceed thirty-two (32) square feet in surface area per side, shall be permitted on any one lot containing such business or establishment, additional signs or signs of greater combined area shall be allowed only by Special Exception, and may have continuous, white, non-flashing illumination, provided

that no light shall infringe on any residential dwelling.

22.7.2 Any sign shall be placed in such a way that it is not a source of danger or hindrance to traffic. All signs are to be constructed of durable materials, well maintained and referencing only to the businesses residing on the lot.

22.7.3 The height of such sign shall not exceed ten (10) feet from the ground level to the top of the sign.

22.8 NON-PERMITTED USES: Air strips or heliports.

ARTICLE 23

23.1 RESIDENTIAL MANUFACTURED HOUSING DISTRICT

23.2 PURPOSE: To provide for the location of Manufactured Housing Parks.

23.3 PERMITTED USES: Manufacturing Housing Parks.

23.4 MANUFACTURED HOUSING PARKS: Manufactured Housing Parks shall be subject to the following regulations:

23.4.1 Each individual manufactured house shall be located on a minimum lot size of ten thousand (10,000) square feet where centralized water and sewage systems are provided. An additional land requirement of five thousand (5,000) square feet per manufactured house shall be allowed for open space and to accommodate central sewage and water systems.

23.4.2 Internal roadways shall be well drained, hard surfaced, and maintained in good condition. Each manufactured house shall connect to an access roadway, which in turn connects with a street or highway.

23.4.3 Manufactured Housing Parks shall provide areas for the parking of motor vehicles. Such areas shall accommodate at least the number of vehicles equal to the number of manufactured home spaces provided in said Manufactured Housing Park.

23.4.4 The operator of each Manufactured Housing Park shall maintain a permanent register showing the following for each manufacture house in the park.

Date of Entry

Name - Owner of Manufactured House

Street, Town and State of Legal Residence

Name of State and Vehicle License Number, Make, Year and Model Serial Number of Manufactured House.

23.4.5 Manufactured Housing Parks shall be allowed to have central facility building constructed on the site when said construction conforms to the Building Code.

- 23.4.6 No manufactured housing unit shall be occupied prior to the issuance of an Occupancy Permit to ensure safe and useable water, sewerage and electric service to the unit which meets all State and Town building codes.
- 23.4.7 A site plan for the entire tract shall be prepared by a registered professional engineer or registered land surveyor. The site plan shall be submitted in accordance with the subdivision or site plan procedures for the Town of Weare and the location of parks and open space shall be shown on the plan.

ARTICLE 24

24.1 COMMERCIAL ZONING DISTRICT

- 24.2 **PURPOSE:** The purpose of commercial districting in the Town of Weare is to encourage the diversification of the Town's economic base by promoting commercial endeavors to locate in Weare and thereby increasing the local services while making a valuable contribution to the Town's tax base.

24.3 PERMITTED USES

- 24.3.1 Any use permitted in the Residential (R) and Rural Agricultural (RA) Districts.
- 24.3.2 Essential public utility services such as transformer stations, sub-stations, pumping stations, or telephone exchanges.
- 24.3.3 Agriculture, but excluding the grazing, care and keeping of such livestock as cows, horses, goats, pigs, and poultry as a gainful business.
- 24.3.4 Boarding or rooming houses, tourist courts or homes including cabins and motels, and accessory structures.
- 24.3.5 Retail and service establishments, including but not limited to grocery, drug store, general merchandise, furniture, apparel and specialty goods, tobacco, newspapers, books, gifts, flowers, barber shop, beauty shop, shoe repair, laundry pickup agency, self-service laundromat, restaurants, indoor recreation facilities, and similar uses.
- 24.3.6 Office establishments.
- 24.3.7 Motor vehicle and equipment sales and service.
- 24.4 **SPECIAL EXCEPTIONS:** The following uses may be permitted by the Zoning Board of Adjustment if it finds that all of the requirements contained in Article 6.1.4, Special Exceptions, have been met and if the Zoning Board of Adjustment further finds that the specific site is an appropriate location for such use, and if in each case the proposed use has and adequate water supply and sewage systems, and meets all other applicable requirements of the State of New

Hampshire and the Town of Weare.

- 24.4.1 Outdoor commercial recreational facilities.
- 24.4.2 Gasoline stations including facilities for minor repairs, but not requiring outdoor storage of unregistered or inoperative vehicles.
- 24.4.3 Commercial removal of loam, clay, sand, and gravel or other types of earth products.
- 24.4.4 Fuel storage and distribution centers.
- 24.4.5 Agriculture, including the grazing, care and keeping of such livestock as cows, horses, goats, pigs, and poultry as a gainful business.

24.5 AREA AND FRONTAGE REQUIREMENTS

- 24.5.1 The minimum lot size for any permitted commercial use shall be two (2) acres. Any residential use shall conform to the requirements of Table 1-1.
- 24.5.2 Each lot shall have a minimum frontage of two hundred (200) feet.

24.6 YARD REQUIREMENTS

- 24.6.1 Each structure shall be set back at least fifty (50) feet from the front lot line.
- 24.6.2 Each structure shall be set back at least thirty (30) feet from the side and rear property lines, except as hereinafter provided in Article 24, Section 7.
- 24.6.3 Not more than fifty percent (50%) of the area of any lot shall be occupied by any buildings or structure, except when authorized as a Special Exception by the Zoning Board of Adjustment.
- 24.6.4 Distance from septic system to drinking well water 75 feet, except when a well and/or septic system is located within Soil Type Classifications 1 (highly permeable soils), where the distance shall be not less than 125 feet.
- 24.6.5 Distance from septic system to surface waters and wetland: 75 feet.

24.7 BUFFER STRIPS: In a commercial district, any new commercial activity adjoining an existing residential property at the effective date of this ordinance or land in a Residential District shall not locate within fifty (50) feet of a property line or the boundary separating the two districts, and shall provide for and maintain a strip of nativized plantings along a property line or boundary if and when the adjoining land is used for residential purposes.

24.8 OFF-STREET PARKING: In a commercial District, ample parking spaces shall be provided on the premises to accommodate vehicles of customers, visitors and employees, and such spaces shall not be closer than the setbacks established in Sections 5 and 6 unless as a continuation of

parking area on an adjoining lot, otherwise by Special Exception. Off-street parking shall be so designed as to require no backing into a public street and shall be so designed as to not impede access by any emergency vehicle.

24.9 SIGNS: In the Commercial District, the following signs shall be permitted.

24.9.1 A maximum number of two (2) signs, the total combined surface area of which shall not exceed sixty-four (64) square feet, shall be permitted on any one lot containing such business or establishment. Additional signs or signs of greater combined area shall be allowed only by Special Exception, and may have continuous, white, non-flashing illumination, provided that no light shall infringe on any residential dwelling.

24.9.2 Commercial subdivisions and commercial shopping centers may erect, by Special Exception, on (1) additional sign not to exceed one hundred (100) square feet of surface area at the principal or main entrance to said subdivision or shopping center.

24.9.3 Any sign shall be placed in such a way that it is not a source of danger or hindrance to traffic constructed of durable materials, well maintained and referencing only to the businesses residing on the lot.

24.9.4 The height of such sign shall not exceed fifteen (15) feet from ground level to the top of the sign.

24.10 NON-PERMITTED USES: Residential Homes

ARTICLE 25

25.1 INDUSTRIAL ZONING DISTRICT

25.2 PURPOSE: The purpose of industrial districting in the Town of Weare is to foster the diversification of the Town's economic base by encouraging small-scale light service industries and light manufacturing firms to locate in Weare, and thereby increase the number of locally based jobs while making a valuable contribution to the Town's tax base.

25.3 PERMITTED USES

25.3.1 Light manufacturing.

25.3.2 Assembly of previously prepared materials.

25.3.3 Metal working

25.3.4 Equipment sales and service.

25.3.5 Creamery, bakery and soft drink bottling plants.

25.3.6 Distribution plants, service industries and parcel delivery.

- 25.3.7 Laboratories.
- 25.3.8 Any use permitted or as allowed as a Special Exception in Commercial District.
- 25.4 NON-PERMITTED USES
- 25.4.1 Manufacture or storage of Class A and B explosives, as defined in Department of Transportation Standard Reference Number 49CFR, in bulk quantities greater than twenty-five (25) pounds.
- 25.4.2 Fertilizer manufacture.
- 25.4.3 Glue manufacture.
- 25.4.4 Smelting of metallic ore.
- 25.4.5 Petroleum refining.
- 25.4.6 Manufacture or processing of acids and industrial solvents and cleaners.
- 25.4.7 Preparation of cement, gypsum, lime or plaster of paris.
- 25.4.8 Fat rendering in preparation of grease or tallow.
- 25.4.9 Animal reduction or garbage dumping.
- 25.4.10 Nuclear waste or nuclear waste by-products.
- 25.4.11 Residential Homes
- 25.5 AREA AND FRONTAGE REQUIREMENTS
- 25.5.1 The minimum lot size for any permitted industrial use shall be two (2) acres. Any residential use shall conform to the requirements of Table 1-1.
- 25.5.2 Each lot shall have a minimum frontage of two hundred (200) feet.
- 25.5.3 Distance from septic system to drinking well water 75 feet, except when a well and/or septic system is located within Soil Type Classifications 1 (highly permeable soils), where the distance shall be not less than 125 feet.
- 25.5.4 Distance from septic system to surface waters and wetland: 75 feet
- 25.6 YARD REQUIREMENTS

- 25.6.1 Each structure shall be set back at least fifty (50) feet from the front lot line.
- 25.6.2 Each structure shall be set back at least thirty (30) feet from the side and rear property lines, except as hereinafter provided in Section 7.
- 25.7 BUFFER STRIPS: In an Industrial District, any new commercial or new industrial activity adjoining an existing residential property at the effective date of this ordinance or land in a Residential District shall not locate within one hundred (100) feet of a property line or the boundary separating the two Districts, and shall provide for and maintain a strip of nativized plantings along and within the entire buffer strip located along a property line or boundary if or when the adjoining land is used for residential purposes.
- 25.8 OFF-STREET PARKING: In an Industrial District, ample parking spaces shall be provided on the premises to accommodate vehicles of customers, visitors and employees, and such spaces shall not be closer than the setbacks established in Sections 5 and 6 unless as a continuation of a parking area on an adjoining lot, and shall be so designed as to require no backing into a public street and shall be so designed as to not impede access by an emergency vehicle.
- 25.9 SIGNS: In the Industrial District, the following signs shall be permitted.
- 25.9.1 A maximum number of two (2) signs, the total combined surface area of which shall not exceed one hundred (100) square feet, shall be permitted on any one lot containing such business or establishment. Additional signs or signs of greater combined area shall be allowed only by Special Exception, and may have continuous, white, non-flashing illumination, provided that no light shall infringe on any residential dwelling.
- 25.9.2 Industrial and commercial subdivisions or parks and commercial shopping centers may erect, by Special Exception, one (1) additional sign not to exceed one hundred (100) square feet in surface area at the principal or main entrance to said subdivision or shopping center.
- 25.9.3 Any sign shall be placed in such a way that it is not a source of danger or hindrance to traffic, constructed of durable materials, well maintained and referencing only to the businesses residing on the lot.
- 25.9.4 The height of such sign shall not exceed fifteen (15) feet from ground level to the top of the sign.

ARTICLE 26

- 26.1 MULTI-FAMILY HOUSING
- 26.2 PURPOSE AND INTENT: The provisions relating to multi-family housing are established to preserve open space and promote affordable housing and efficient use of land utilities.
- 26.3 In addition to other requirements of a Special Exception contained in Article 6.1.4, Special Exceptions, the following standards shall apply to all multi-family housing seeking a special

exception pursuant to Article 19.1.2.

- 26.3.1 Each dwelling unit shall comply with minimum lot size in Table 1-1.
- 26.3.2 Multi-family to consist of no more than eight (8) dwelling units per building, and not more than three (3) stories of heated living space.
- 26.3.3 Any internal roads or streets serving the multi-family structure shall be built to State of New Hampshire and Town of Weare specifications.
- 26.3.4 Any multi-family structure shall comply with the following set back requirements.
1. Setback - fifty (50) feet from right-of-way.
 2. Setback - one hundred (100) feet between buildings for fire protection.
 3. Frontage - minimum of two hundred (200) feet of frontage shall be required on a Class V Town Road.
- 26.3.5 All parking for multi-family housing shall be provided in paved off-street locations at a ratio of not less than two and a half (2.5) parking spaces per dwelling unit.
- 26.3.6 No dwelling unit to contain more than three (3) bedrooms.
- 26.3.7 Buffer strips: Multi-family housing shall not locate within one hundred (100) feet of the property line of any other residential property and shall provide and maintain a strip of nativized plantings along and within the buffer strip.

ARTICLE 27

27.1 CLUSTER HOUSING

27.2 **PURPOSE AND INTENT:** The purpose of cluster development, and to which purpose any such development must adhere, are the following:

- 27.2.1 To promote the conservation of the natural environment and the development of community uses in harmony with the natural features of the land.
- 27.2.2 To establish living areas within the Town that provide for a balance of community need such as diversity of housing opportunities, adequate recreation and open space areas, easy accessibility to these and other community facilities, and pedestrian and vehicular safety.
- 27.2.3 To provide for an efficient use of land, streets, and utility systems.
- 27.2.4 To stimulate new approaches to community development.

27.3 REQUIREMENTS

- 27.3.1 Cluster developments shall be permitted in the Residential (R) and Rural Agricultural (RA)

Districts.

- 27.3.2 The tract of single or consolidated ownership at the time of application shall be at least 15 acres in size and shall be subject to approval by the Planning Board whether or not the land is to be subdivided. Otherwise by Special Exception.
- 27.3.3 The number of dwelling units per project shall comply with minimum lot size density requirements of Table 1-1.
- 27.3.4 Cluster housing to consist of no more than one (1) single dwelling unit per building.
- 27.3.5 Internal streets are to meet the Town/State specifications.
- 27.3.6 Within cluster, the following setbacks are required:
1. Set back - fifty (50) feet from right-of-way.
 2. Setback - fifty (50) feet between buildings for fire and emergency vehicle access.
 3. Frontage - minimum of twenty-five (25) feet of frontage on a street shall be required per dwelling unit.
- 27.3.7 All parking within the cluster development shall be provided in paved off-street locations at a ratio of not less than two (2) spaces per dwelling unit
- 27.3.8 No dwelling unit shall contain more than three (3) bedrooms.
- 27.3.9 Buffer strips: Cluster housing shall not locate within one hundred (100) feet of the property line of any other residential property and shall provide and maintain a strip of nativized plantings along and within the buffer strip.
- 27.3.10 The development shall be served by central sewerage. Central wells are required in all developments of 15 or more dwelling units. Where cluster developments can meet minimum NH Water Supply and Pollution Control Division standards individual septic systems and wells shall be allowed by Special Exception.
- 27.3.11 At least fifty percent (50%) of total tract area exclusive of public right-of-ways shall be set aside as open space uses covenanted to be maintained as permanent "open space" in private or cooperative non-profit ownership. Open space within a cluster development shall be protected by recreation and conservation easements and shall be maintained as permanent open space. Such common land shall be restricted to open space uses. Such common land shall have suitable access to a street. Open space acreage shall be contiguous to the greatest extent possible.
- 27.3.12 A site plan for the entire tract shall be prepared by a registered professional engineer or registered land surveyor. The site plan shall be submitted in accordance with the regulations for the Town of Weare and the location of parks and open space shall be shown on the plan.
- 27.3.13 A performance bond and other legal data shall be submitted as required by the Planning Board to insure the completion of streets, buffers, and amenities in accordance with the accepted plans

and the regulations of the Town of Weare as adopted or hereinafter amended.

- 27.3.14 The Planning Board shall adopt such procedures as part of the regulations as it may deem necessary in order to insure sufficient public review of any cluster proposal and to insure compliance with these and other town ordinances and regulations.

ARTICLE 28

28.1 WETLANDS ZONE LAND PLANNING ORDINANCE

- 28.2 **PURPOSE AND INTENT:** The purpose and intent of this ordinance is to protect the public health, safety and general welfare by controlling and guiding the use of land areas which have been found to be subjected to high water tables over extended periods of time. It is intended that this ordinance shall:

- 28.2.1 Prevent the development of structures and land uses on naturally occurring wetlands which could contribute to pollution of surface and ground water by sewage or toxic substances.
- 28.2.2 Prevent the destruction of, or significant changes to, natural wetlands which provide flood protection.
- 28.2.3 Protect unique and unusual natural areas.
- 28.2.4 Protect wildlife habitats, travel ways, and maintain ecological balances.
- 28.2.5 Protect potential water supplies and existing aquifers and aquifer recharge areas.
- 28.2.6 Prevent expenditure of town funds for the purposes of providing and/or maintaining essential services and utilities which might be required as a result of misuse or abuse of wetlands.
- 28.2.7 Encourage those low-intensity uses that can be harmoniously, appropriately and safely located close to wetlands.

- 28.3 **WETLANDS DEFINED:** Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. (EPA, 40 CFR 230.3 and CE, 33 CFR)

- 28.4 **EXAMPLES OF WETLANDS:** The wetland zone shall include all lands deemed as Jurisdictional Wetlands by the New Hampshire Wetlands Board under the authority granted to them by Statute (RSA 482-A), and as more particularly described in the New Hampshire Wetlands Board Code of Administrative Rules Chapter WT 100 through WT 800.

- 28.5 **WETLAND ZONE BOUNDARIES:** Wetland Zone Boundaries shall be delineated on the basis of hydrophytic vegetation, hydric soils, and wetlands hydrology, in accordance with the techniques outlined in the Federal Manual for Delineating Jurisdictional Wetlands (January 10,

1998)

- 28.5.1 DISPUTED BOUNDARIES: In cases where disputes arise regarding location of wetland zone boundaries, a certified soil scientist shall delineate soil boundaries in the field applicants expense and those lines shall be accurately depicted on all plan submitted.
- 28.5.2 REPEALED PER VOTE OF MARCH 1995 TOWN MEETING
- 28.5.3 WETLANDS INCORRECTLY DELINEATED: When a plan is proposed for development in an area which may involve wetlands, it is the responsibility of the applicant to indicate on all maps those areas which meet the definition of the Wetland District. In the event that an area is incorrectly designated as being wetland, and evidence to that effect is satisfactorily presented to the Planning Board, the restrictions contained in this Section shall not apply. Conversely, in the event an area is incorrectly designated as not being a wetland to the Planning Board, the restrictions contained in this section shall apply. Such evidence may be obtained by adequate on-site investigation and analysis conducted by a qualified professional.
- 28.5.4 RELATION TO OTHER ZONES: Where the Wetlands Zone is superimposed over current town maps, or land planning maps of the future, the more restrictive regulations shall apply.
- 28.6 PERMITTED USES: In designated wetland areas, permitted uses are any uses that are compatible with the intent of this Ordinance and does not involve significant alteration of the wetland. Such uses include:
- 28.6.1 Forestry-tree farming, using best management practices in order to protect streams from damage and to prevent erosion or sedimentation.
- 28.6.2 Cultivation and harvesting of crops according to recognized soil conservation practices including the protection of wetlands from pollution caused by fertilizers, pesticides and herbicides used in such cultivation.
- 28.6.3 Wildlife refuges and wildlife travel corridors.
- 28.6.4 Parks and recreation uses consistent with the purpose and intent of this regulation.
- 28.6.5 Conservation areas and nature trails.
- 28.6.6 Open spaces as permitted or required by subdivision regulations or zoning ordinances, if any.
- 28.6.7 The undertaking of a use not otherwise permitted above in the Wetlands Zone, if it can be shown that such proposed use is not in conflict with any and all of the purposes and intentions listed in Section 28.2 of this Article and does not create a substantial impact to the Wetlands Zone as determined by the Planning Board. Otherwise, see Article 28.7.
- 28.7 Any necessary Federal and State wetlands permits must be obtained for any street, road and other access ways and utility right-of-way easements, including power lines and pipe lines, if essential to the productive use of the land and if so located and constructed as to minimize any

detrimental impact of such uses upon and within the Wetlands Zone.

28.7.1 Dredging and filling. If allowed, all necessary federal, state and Town of Weare permits will be required. Failure to obtain all necessary permits will result in a fine of two hundred and seventy five dollars (\$275) per day for each day of violation.

28.8 SETBACKS: All buildings shall be a minimum of 50 feet from any jurisdictional wetland boundary. Existing lots of record as of the date of the adoption of this ordinance shall be exempt from this requirement.

ARTICLE 29

29.1 AQUIFER PROTECTION ORDINANCE - TOWN OF WEARE

29.2 PURPOSE: Pursuant to RSA 674:16 - 674:21, the Town of Weare adopts an Aquifer Protection Ordinance and accompanying regulations to help insure a quality future for the people as set forth in the Master Plan. The Town believes that an adequate water supply is indispensable to the future well being, health, welfare, and safety of its citizens. Such an adequate supply of quality water is also essential to the maintenance of the existing natural environment of the Town, an environment the Town wishes to protect as essential to its overall goals and objectives. Since the water resources are under a constantly increasing demand for new and/or competing uses, and since the resources are under an ever increasing potential for contamination, the Town declares such water resources invaluable. These resources should be protected, conserved and managed in the interests of present and future generations. Therefore, the purposes of this Aquifer Protection Ordinance are:

29.2.1 To protect the public health and general welfare of the citizens of Weare.

29.2.2 To protect, preserve and maintain the existing and potential groundwater supplies from adverse development or unwise land use practices.

29.2.3 To promote future growth and development of Weare, in accordance with the Master Plan, by insuring the future availability of clean water for drinking and all domestic uses, plus, having available water in quantity for the Town's commercial and/or industrial future requirements.

29.2.4 To encourage uses that can appropriately and safely be located within the direct and indirect recharge areas of the aquifers.

29.3 LOCATION: The Aquifer Protection Zone is identified as those areas appearing on the Department of Interior, United States Geological Survey, entitled: AVAILABILITY OF GROUND WATER IN THE LOWER MERRIMACK RIVER BASIN, SOUTHERN NEW HAMPSHIRE, Water Resources Investigation 77-69, by Jon Cotton, 1977 and/or as may be amended or superseded by the United States Geological Survey, or by the Planning Board as provided herein from time to time.

29.4 RECHARGE AREAS: For the purpose of this Ordinance, the Direct Recharge area for the

U.S.G.S identified aquifers are considered to the excessively well-drained soils directly over the aquifer. No primary or Indirect Recharge areas have been identified at the time of enactment and are not considered a part of this ordinance.

29.5

DEFINITIONS:

AQUIFER: A geologic formation, group of formations, or part of a formation that is capable of yielding quantities of groundwater usable for municipal or private water supplies.

BULK SALE: Removal and sale of groundwater.

GROUNDWATER: All the water below the land surface in sediments of sand, gravel and mixtures, or in rock fractures capable of yielding water to a well.

GROUNDWATER MINING: Water being withdrawn at a rate exceeding the rate of recharge.

GROUNDWATER RECHARGE AREAS: Those primary, direct and indirect areas from which water is added to the aquifers by the natural processes of infiltration and precipitation.

LEACHABLE WASTES: Waste materials, including solid wastes, sludge and agricultural wastes that are capable of releasing contaminants to the surrounding environment.

MINING: The removal of geologic materials such as topsoil, sand and gravel, metallic ores, or bedrock to be crushed or used as building stone.

NON-CONFORMING USES: Any lawful use of building, structures, premises, land or parts thereof existing as of the effective date of this Ordinance, or amendment thereto, and not in conformance with the provisions of this Ordinance, shall be considered to be a non-conforming use.

RECHARGE AREAS: Any land surface from which groundwater recharge occurs.

SOLID WASTE: Any discarded or abandoned material including refuse, putrescible materials, septage, or sludge, as defined by New Hampshire Solid Waste Rules HE-P 1901.03. Solid waste includes solids, liquids, semi-solids, or waste containing gaseous material resulting from residential, industrial, commercial, mining, or agricultural operations, or waste from community activity or waste from educational institutions.

STRUCTURE: Anything constructed or erected, except a boundary wall or fence, the use of which requires location on the ground or attachment to something on the ground. For the purposes of this Ordinance, buildings are structures.

TOXIC OR HAZARDOUS MATERIALS: Any substance or mixture of such physical, chemical, or infectious characteristics as to pose a significant, actual or potential hazard to water supplies, or other hazard to human health, if such substance or mixture were discharged to land or waters of this Town. Toxic or hazardous materials include, without limitation, volatile organic

chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, asphalt and roofing tars, and include products such as pesticides, herbicides, solvents and thinners, and such other substances as defined in New Hampshire Water Supply and Pollution Control Rules, Section Ws 410.04(4), in New Hampshire Solid Waste Rules He-P 1901.03(v), and in the Code of Federal Regulations 40 CFR 261. Wastes generated by the following commercial activities are presumed to be toxic or hazardous, unless and except to the extent that anyone engaging in such an activity can demonstrate the contrary to the satisfaction of the Planning Board:

- Chemical and bacteriological laboratory operation, including laboratory operations in educational institution.
- Dry cleaning and laundries.
- Electronic circuit manufacturing.
- Metal plating, finishing and polishing.
- Painting, wood preserving and furniture stripping.
- Pesticide and herbicide application.
- Photographic and printing processes.

29.6 APPEALS: Where bounds of the identified aquifer areas, as delineated, are in doubt or in dispute, any landowner aggrieved by such delineation may appeal the boundary location to the Planning Board. Upon receipt of such appeal, the Planning Board shall suspend further action on development plans related to the area under appeal and engage, at the landowner's expense, a qualified hydrogeologist to prepare a report determining the proper location and extent of the aquifer area(s) relative to the property in question. The aquifer map shall be modified, if need be, by such determination subject to review and approval by the Planning Board.

29.7 USE REGULATIONS

29.7.1 For minimum lot size refer to lot sizes for Residential, Rural Agricultural, Commercial and Industrial.

29.7.2 MAXIMUM LOT COVERAGE: Within the Aquifer Protection Zone, no more than 10% of a single lot, including the portion of any new street abutting the lot, may be rendered impervious to infiltration. Maximum lot coverage may be increased if upon site plan review, drainage requirements are properly engineered.

29.8 PROHIBITED USES: The following uses are prohibited in the Aquifer Protection Zone except where permitted to continue as a non-conforming use.

29.8.1 Disposal of solid waste other than brush.

29.8.2 Disposal of hazardous waste.

29.8.3 Subsurface storage of petroleum and other refined petroleum products.

29.8.4 Industrial uses which discharge processed waters.

- 29.8.5 Storage of road salt or other de-icing chemicals.
- 29.8.6 Dumping of snow containing de-icing chemicals.
- 29.8.7 Storage of unregistered junk automobile, junk and salvage yards.
- 29.8.8 Waste injection wells.
- 29.9 PERMITTED USES: The following activities may be permitted provided they are conducted in accordance with the purpose and intent of this Ordinance.
 - 29.9.1 Single and two-family residential development.
 - 29.2.2 Activities designed for conservation of soil, water, plants and wildlife.
 - 29.2.3 Outdoor recreation, nature study, boating, fishing and hunting and other activities directly associated with the conservation of wildlife.
 - 29.9.4 Normal operation and maintenance of existing water bodies and dams, splash boards and other water control, supply and conservation devices.
 - 29.9.5 Foot, bicycle, horse paths, ski trails and bridges.
 - 29.9.6 Maintenance, repair of any existing structure, providing there is no increase in impermeable surface above the limit established by this Ordinance.
 - 29.9.7 Farming, gardening, nursery, forestry, harvesting and grazing provided that fertilizers, herbicides, pesticides, manure and other leachables are used appropriately at levels that will not cause groundwater contamination. Materials will be stored under shelter.
 - 29.9.8 Maintenance and repair of any existing structure.
- 29.10 SPECIAL EXCEPTIONS: The Zoning Board of Adjustment may grant a Special Exception for those uses otherwise permitted in the underlying zoning district only if written findings of fact are made that all of the following are true:
 - 29.10.1 The proposed use will NOT detrimentally affect the quality of the groundwater contained in any aquifer by directly contributing to pollution or by increasing the long-term susceptibility of any aquifer to potential pollutants.
 - 29.10.2 The proposed use will not cause a significant reduction in the long-term volume of water contained in any aquifer or in the storage capacity of any aquifer.
 - 29.10.3 The proposed use will discharge no waste water on site other than that typically discharged by domestic waste water disposal system and will not involve on-site disposal of toxic or hazardous

wastes as here defined.

29.10.4 The proposed use complies with all other applicable sections of this Ordinance.

29.10.5 The Zoning Board of Adjustment may require that the applicant provide data or reports prepared by a registered professional engineer or qualified registered professional engineer or qualified groundwater consultant to assess any potential damage to the aquifer that may result from the proposed use. The Zoning Board of Adjustment shall engage such professional assistance as it requires to adequately evaluate such reports and to evaluate, in general, the proposed use in light of the above criteria.

29.11 CONDITIONAL USES

29.11.1 The excavation of earth products providing such excavation does not go lower than four (4) feet above the water table.

29.11.2 Construction of ponds subject to site plan review.

29.12 SEPTIC SYSTEM DESIGN AND INSTALLATION: In addition to meeting all local and state septic system siting requirements, all new waste water disposal systems installed in the Aquifer Zone shall be designed by a registered professional engineer licensed in New Hampshire and approved by the Planning Board.

29.13 ADDITIONAL GUIDELINES: Except for single family and two-family dwellings, the following guidelines shall be observed within the Aquifer Protection Zones.

29.13.1 Safeguards: Provision shall be made to protect against toxic or hazardous materials discharge or loss resulting from corrosion, accidental damage, spillage, or vandalism through measures such as: spill control provisions in the vicinity of chemical or fuel delivery points, secured storage areas for toxic or hazardous materials, and indoor storage provisions for corrodable or dissolvable materials. For operation which allow the evaporation of toxic or hazardous materials into the interiors of any structure, a closed vapor recovery system shall be provided for each such structure to prevent discharge of contaminated condensate into the groundwater.

29.13.2 Location: Where the premises are partially outside the Aquifer Protection Overlay Zone, potential pollution sources such as on-site waste disposal systems shall be located outside the Zone.

29.13.3 Drainage: Runoff from impervious surfaces shall be recharged on the site, and diverted toward areas covered with vegetation for surface infiltration to the extent possible. Commercial and Industrial dry well shall be used only where other methods are not feasible, and shall be preceded by oil, grease, and sediment traps to facilitate removal of contaminants.

29.13.4 Inspection: All uses granted under Section 29.10 may be subject to annual inspections by the Building Inspector or if another agent, that agent must be approved by both the Board of Selectmen and the Planning Board. The purpose of these inspections is to ensure continued

compliance with the conditions under which approvals were granted. A fee for inspection shall be charged to the owner according to a fee schedule determined by the Selectmen.

ARTICLE 30

30.1 RURAL CONSERVATION OVERLAY DISTRICT

30.2 PURPOSE & INTENT: The Rural Conservation Overlay District is superimposed over the Rural Agricultural (RA) District in order to encourage wise use of land which contains important natural resources. The RC District is intended to protect and enhance the rural character and natural resources of the town, yet allow for orderly residential growth, and to provide for the retention of open spaces. It is intended that this ordinance shall.

30.2.1 Reduce the density of development on prime and significant agricultural soils in order to retain them for use by farm and horticultural enterprises both now and in the future.

30.2.2 Protect from excessive or inappropriate development unique and unusual natural areas which contain important natural or geological resources, wildlife, or other natural features.

30.2.3 Prevent expenditure of town funds for the purposes of providing and/or maintaining essential services and utilities in remote or inaccessible areas of the town where adequate services cannot be reasonably provided due to severe natural conditions.

30.3 PERMITTED USES

30.3.1 All uses permitted in the Rural Agricultural (RA) District are permitted in this District.

30.3.2 Special Exceptions, see Article 19.

30.4 AREA REQUIREMENTS

30.4.1 Individual lots: The area requirements shown in Table 1-1 Article 14, shall be doubled within the Rural Conservation District.

30.4.2 In cluster housing developments the density requirements in Table 1-1 shall apply. Where cluster developments are proposed in areas which contain prime agricultural soils, such soils shall be preserved as open space to the greatest extent possible.

30.4.3 All other setback and distance requirements shall be the same as those in the Rural Agricultural (RA) District.

30.4.4 A three lot or fewer subdivision as defined in 30.4.5 will be exempt from the requirements of 30.4.1 and shall determine lot size based on Table 1-1.

30.4.5 Pursuant to Article 30.4.4, land shall be deemed to be subdivided into three lots or fewer if the

pending application seeks to subdivide fewer than three (3) lots and the originating parcel (as the parcel existed in 1975 when the tax maps were first developed) has been previously subdivided into a number of lots which when added to the number of lots sought to be subdivided in the pending application does not exceed a total of three (3) lots.

ARTICLE 30-A

30-A MT. DEARBORN ROAD HISTORIC AREA OVERLAY DISTRICT

- 30-A.1 PURPOSE AND INTENT:** The Mt. Dearborn Road Historic Area Overlay District is superimposed over the Rural/Agricultural District in order to preserve the scenic, historic and open space character of the designated zone. The purpose is to promote the objectives of the Weare Master Plan, in particular goal 7: “to protect areas of unusual natural or historic value from inappropriate development.”
- 30-A.2** The Mt. Dearborn Road Historic Area Overlay District consists of an area 1200 feet from the centerline on both sides of the entire length of Mt. Dearborn Road but excluding (a) lots of record abutting Lafrance, Gove or Hodgdon Road, (b) lots of record on the southerly side of Deering Center Road (State Route 149) and (c) any cemeteries within that area.
- 30-A.3** Uses permitted in the Rural Agricultural District are permitted in the Mt. Dearborn Road Historic Area Overlay District other than those set forth in 17.3.1 (churches, municipal facilities, nursing homes, etc.) with the following additional restrictions:
- 30-A.3.1** No development shall occur within the Mt. Dearborn Road Historic Area Overlay District except by special exception. The Zoning Board of Adjustment shall not a grant a special exception unless:
- 30-A.3.1.1** The board finds that the proposed development (a) will be sited as not to be visible from any point on Mt. Dearborn Road when viewed as if no vegetation existed and (b) meets all relevant requirements of 6.1.4 excluding section 6.1.4.6, OR
- 30-A.3.1.2** The board finds that the lot on which the proposed development is to occur (a) was a lot of record on the date this article was adopted, (b) is substantially within the Mt. Dearborn Road Historic Area Overlay District and (c) contains no dwelling unit. If the board so finds, it may grant a special exception for a single dwelling unit on the lot, provided that (a) the single dwelling unit meets all relevant requirements of Section 6.1.4 and (b) its exterior conforms in style, appearance and materials to the character and period of any dwelling unit within the Mt. Dearborn Road Historic Area Overlay District that was built prior to 1840, OR
- 30-A.3.1.3** The board finds that, if there is a dwelling unit on the lot, the exterior of any proposed accessory use conforms in style, appearance and materials to the character and period of the dwelling unit on the lot, or if there is no dwelling unit on the lot, the exterior of any proposed accessory use conforms in style, appearance and materials to the character and period of any dwelling unit within the Mt. Dearborn Road Historic Area Overlay District built prior to 1840. For purposes of this subsection, examples of accessory uses include, but are not limited to, barns, sheds, private roads and fences.

- 30-A.4 The Planning Board shall only approve a subdivision in the Mt. Dearborn Road Historic Area Overlay District in which each proposed lot has been granted a special exception by the Zoning Board of Adjustment that meets the requirements of section 3.1 of this Article.

ARTICLE 30-B

A CLINTON GROVE HISTORIC OVERLAY DISTRICT

- B. **AREA, PURPOSE AND INTENT:** The Clinton Grove Historic Overlay District (CGHOD) is superimposed over the Clinton Grove Village District in its entirety except lot 404-167. The purpose and intent of the CGHOD shall be to preserve and safeguard the scenic, historic, rural and open space characteristics of the designated zone and more particularly to promote the following objectives:
- a) To protect areas of unusual natural or historic value from inappropriate development.
 - b) To protect scenery and open space from incompatible development.
 - c) To safeguard the heritage of the Town of Weare, and of Clinton Grove particularly, by providing for the protection of buildings, landscapes, and areas representing significant elements of their history and natural beauty.
 - d) To enhance the visual character of the Town of Weare, and Clinton Grove particularly, by promoting compatibility and harmony of architectural styles and land uses.
 - e) To foster public appreciation of and civic pride in the beauty of the Town of Weare, and of Clinton Grove particularly, and in the landscapes, landmarks, and accomplishments of the past.
- C. Uses permitted in the Village District are permitted in the CGHOD with the following restrictions:
- C.1 an No new building shall be erected within the CGHOD unless by special exception. In reviewing Application for a special exception, the Zoning Board of Adjustment shall take into account the purpose and intent of the CGHOD. The board shall not grant a special exception unless:
- C.1.1 unit The board finds that if there is a dwelling unit on the lot, the exterior of any proposed new building conforms in style and appearance to the character and period of the existing dwelling on the lot, OR
- C.1.2 The board finds that if there is no dwelling unit on the lot, the exterior of any proposed new building is compatible with the historic architectural character of the CGHOD including, but not limited to the following components: the general size and scale of the proposed new building in relationship to the existing surroundings, include such factors as the building height and mass, lot coverage, type of roof, roof line and pitch, architectural style, façade and architectural details, scale and treatment of window and door openings, style and intensity of exterior lighting, and the design, scale and arrangement of site features and improvements including yards, parking, driveways, signage, and landscaping as they affect the setting for the building and the character of the CGHOD.

C.1.3 The following shall be exempt from the requirements of section C.1 of this Article: residential and agricultural accessory buildings and appurtenant structures such as private garage, barn, shed, greenhouse, porch, deck, breezeway, well house, cabana, gazebo, children's play structures, and buildings less than three hundred fifty (350) square feet in floor area used primarily for the sale of farm, horticultural, or nursery products grown on site provided, however, that any such residential accessory building or appurtenant structure shall be uniformly sided with either clapboards, vertical boards, or "board and batten" on the exterior. Synthetic siding that closely resembles the appearance of wood siding shall be permitted. Greenhouses, decks, porches, children's play structures and residential accessory structures less than one hundred (100) square feet in floor area are exempt from this siding requirement. Emergency or manufactured housing for temporary occupation during the repair or replacement of a damaged dwelling shall be exempt from the requirements of this Article.

C.1.4 and The board shall be entitled to grant relief from the requirements of sections C.1, C.1.1, C.1.2, C.1.3 of this Article in the interest of public health or safety or to alleviate financial or physical hardship in the repair or replacement of a damaged building.

C.2 not The following exterior alterations shall be permitted for any building in the CGHOD and shall require a special exception:

- a) Exterior alterations not visible from a public street; ordinary maintenance or repair which does not involve changes in design; alterations which allow a building to conform more closely to its original or most characteristic appearance; like-kind replacement.
- b) Alterations to improve safety or handicapped accessibility.
- c) Painting.
- d) Repair, replacement, or installation of chimneys, skylights, exhaust vents, roofing materials, gutters and downspouts, roof-mounted snow and ice control devices; lightning rods, doors, stairs, railings, windows, window boxes, insect or security screens, shutters, and related hardware, whether new or existing.
- e) Repair or replacement of siding provided the replacement siding has approximately the same appearance as the existing siding.
- f) Utilities and fuel service; exterior lighting in conformity with Article 3.2 of the Town of Weare Zoning Ordinance; private residential satellite dishes.

Exterior alterations otherwise shall require a special exception. The board shall not grant a special exception unless the board finds that the proposed exterior alteration conforms in style and appearance to the character and period of the building being altered. The board shall be entitled to grant relief from this section of this Article in the interest of public health or safety or to alleviate a financial or physical hardship.

C.3 Demolition or removal of an entire building or structure shall not require a special exception. However, there shall be required a thirty (30) day delay between the date of issuance of a permit for demolition or removal and the date of commencement of said demolition or removal. Upon issuing a permit for demolition or removal, the Building Inspector shall immediately notify the

Weare Historical Society by First Class US Mail of the existence of such permit and the relevant location, in order to allow for a confidential, voluntary, non-binding consultation, if so chosen, between the property owner and the Weare Historical Society.

- C.3.1 Demolition of less than three hundred fifty (350) square feet of floor area of a building shall be exempt from the requirements for special exception and demolition delay.
- C.3.2 The board shall be entitled to grant relief from sections C.3 and C.3.1 of this Article by reason of public health or safety or to alleviate financial or physical hardship.
- C.4 New uses otherwise permitted under Article 22.4.2 of the Town of Weare Zoning Ordinance shall be restricted within the CGHOD to small scale retail, agriculture, service, historical museum, and office establishments intended to serve limited or localized markets and which are compatible in scale and type of use with the purpose and intent of the CGHOD. Any use that generates a significant increase in vehicular traffic, or requires large amounts of parking or outside storage, or which is offensive to the neighborhood because of noise, vibration, dust, smoke, fumes, odors, hazardous materials, lighting, reduction in property values, hours of operation, or other disruptive influence shall be considered incompatible with the CGHOD. Home Occupation as such term is defined under Article 4.1 of the Town of Weare Zoning Ordinance shall be considered compatible with the CGHOD.
- C.5 Any new commercial use or any use otherwise permitted under Article 22.4.2 of the Town of Weare Zoning Ordinance occupying in excess of one thousand (1,000) square feet in area within the CGHOD shall require a special exception. In reviewing an application for a special exception, the board shall take into account the purpose and intent of the CGHOD. In granting a special exception, the board shall find that all the requirements of Article 3.2 and Article 6.1.4, and this Article of the Town of Weare Zoning Ordinance are met. In carrying out the purpose and intent of the CGHOD, the board shall also be entitled to restrict hours of operation, exterior lighting, outside storage and parking, and to impose other conditions upon any use granted a special exception.
- C.6 SIGNAGE: The following limits and restrictions shall apply to signs in the CGHOD:
- C.6.1 On any one (1) lot there shall be no more than:
- a) one (1) sign the surface area of which shall not exceed twelve (12) square feet per side, and
 - b) one (1) additional sign the surface area shall not exceed five (5) square feet per side
- C.6.1 Any sign shall be stationary, square or rectangular in shape, with a maximum of two (2) sides and shall be constructed of durable natural materials to the greatest extent possible. Any sign shall be of modest design, coloration, and appearance compatible with the purpose and intent of the CGHOD and shall contain no animated, moving, fluorescent, or neon elements. No sign shall reference an off premise business or enterprise. No sign shall be illuminated from within, but may be modestly illuminated solely by a shielded, continuous white external light source. No sign shall exceed eight (8) feet in height from ground level to top of sign. Unlighted historical

markers and “circa” signs constructed of wood, brass, or bronze of modest and restrained design and measuring less than three (3) square feet in surface area shall be exempt. Signs no exceeding two (2) square feet in area and customarily associated with residential use such as nameplates, warnings, or land postings shall be exempt.

- C.7 Minimum lot size in the CGHOD shall be two (2) acres.
- C.8 No structure or building shall be erected within thirty five (35) feet of any cemetery in existence In the CGHOD at the time of adoption of this ordinance, unless by special exception.
- C.9. NON-PERMITTED USES: Non-permitted uses in the Village District are also non-permitted uses within the CGHOD with the following additional uses also non-permitted:
- C.9.1 Commercial removal of sod, soil, loam, clay, sand, gravel, rock, or other earth products unless said removal is deemed incidental as defined under Article 19.1.6 of the Town of Weare Zoning Ordinance.
- C.9.2 Sale, repair, rental, or lease of motorized vehicles, motorized equipment, or watercraft, including sale or repair of related parts or equipment. Sale by resident of one (1) private vehicle or watercraft at any one time is permitted.
- C.9.3 Sale of gasoline or other motor fuels.
- C.9.4 Outside storage or more than one (1) unregistered or inoperable motor vehicle, boat, trailer, or travel trailer.
- C.9.5. Outside storage or cargo containers, railcars, storage trailers or similar units unless incidental to active construction work on site.
- C.9.6 Construction of new streets. Private driveways are permitted.
- C.9.7 Rooming house, condominium, cluster, multi-family, or other high-density housing.
Commercial multi-tenant, condominium, or other high density commercial or office use.
- C.9.8 Public storage facilities and warehousing.
- C.9.9 Signs exceeding the limits set forth in this Article.
- C.9.10 New fences or walls in excess of sixty (60) inches from ground level to top of wall or fence, unless by special exception.

ARTICLE 31

31.1 FLOODPLAIN DEVELOPMENT REGULATIONS

- 31.2 APPLICABILITY: These Floodplain development regulations shall apply to all lands designated as “special flood hazard areas” by the Federal Emergency Management Agency (FEMA) in its “Flood Insurance Study for the Town of Weare, NH” together with the associated Flood Insurance Rate Maps dated June 2, 1993 which are declared to be a part of this Ordinance and are hereby incorporated by reference.

These regulations shall overlay and supplement other provisions of this Ordinance for purposes of administration and appeals under State law.

If any of the provisions of these regulations differs or appears to conflict with any other provision of the Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or the more stringent standard shall be controlling.

31.3 DEFINITIONS

The following definitions shall apply only to these Floodplain Development Regulations, and shall not be affected by the provision of any other ordinance of the Town of Weare.

- 31.3.1 “Area of Shallow Flooding” means a designated AO, AH or VO Zone on the Flood Insurance Rate Map (FIRM) with a one percent or greater annual possibility of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet-flow.”
- 31.3.2 “Area of Special Flood Hazard” is the land in the floodplain within the Town of Weare subject to a one-percent or greater possibility of flooding in any given year. The area is designated as Zone A on the FHBMs and is designated on the FIRM as Zones A and AE.
- 31.3.3 “Base Flood” means the flood having a one-percent possibility of being equaled or exceeded in any given year.
- 31.3.4 “Basement” means any area of a building having its floor subgrade on all sides.
- 31.3.5 “Building” - see “Structure”.
- 31.3.6 “Breakaway Wall” means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation.
- 31.3.7 “Development” means any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operation.
- 31.3.8 “FEMA” means the Federal Emergency Management Agency.
- 31.3.9 “Flood” or “Flooding” means a general and temporary condition of partial or complete

inundation of normally dry land areas from:

- 31.3.9.1 The overflow of inland or tidal waters; or
- 31.3.9.2 The unusual and rapid accumulation of runoff of surface waters from any source.
- 31.3.10 “Flood Elevation Study” means an examination, evaluation, a determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood-related erosion hazards.
- 31.3.11 “Flood Insurance Rate Map” (FIRM) means an official map incorporated with this Ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Weare.
- 31.3.12 “Flood Insurance Study” - see “Flood Elevation Study”
- 31.3.13 “Floodplain” or “Flood-prone Area” means land area susceptible to being inundated by water from any source (see definition of “Flooding”)
- 31.3.14 “Flood Proofing” means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities structures and their contents.
- 31.3.15 “Floodway” - see “Regulatory Floodway”.
- 31.3.16 “Functionally Dependent Use” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading/unloading of cargo or passengers, and ship building/repair facilities; but does not include long-term storage or related manufacturing facilities.
- 31.3.17 “Highest Adjacent Grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
- 31.3.18 “Historic Structure” means any structure that is:
 - 31.3.18.1 Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 - 31.3.18.2 Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
 - 31.3.18.3 Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

- 31.3.18.4 Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either;
- 31.3.18.4.1 By an approved state program as determined by the Secretary of the Interior, or
- 31.3.18.4.2 Directly by the Secretary of the Interior of states without approved programs.
- 31.3.19 “Lowest Floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building’s lowest floor; provided, that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of these regulations.
- 31.3.20 “Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term “manufactured home” includes park trailers, travel trailer, and other similar vehicles placed on site for greater than one hundred and eight (180) days.
- 31.3.21 “Mean Sea Level” means the Nation Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community’s Flood Insurance Rate Map are referenced.
- 31.3.22 “100 Year Flood” - see “Base Flood”
- 31.3.23 “Recreational vehicle” means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.
- 31.3.24 “Regulatory Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation. These areas are designated as floodways on the Flood Boundary and Floodway Map.
- 31.3.25 “Special Flood Hazard Area” means an area having flood, mudslide, and /or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A or AE. (See “Area of Special Flood Hazard”).)
- 31.3.26 “Structure” means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufacture home.
- 31.3.27 “Start of Construction” includes substantial improvements and means the date the building permit was issued, provided the actual start of construction , repair, reconstruction, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the

pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

31.3.28 “Substantial Damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

31.3.29 “Substantial Improvement” means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty (50) percent of the market value of the structure. The market value of the structure should equal:

31.3.29.1 The appraised value prior to the start of the initial repair or improvement; or

31.3.29.2 In the case of damage, the value of the structure prior to the damage occurring.
The purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the buildign commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of an “historic structure,” provided that the alteration will not preclude the structure’s continued designation as an “historic structure”.

31.3.30 “Water Surface Elevation” means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains.

31.4 PERMIT REQUIRED

All proposed development in any special flood hazard area shall require a building permit.

31.5 PERMIT PROVISIONS

The Building Inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in a special flood hazard area, all new construction or substantial improvements shall:

31.5.1 Be designated (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

31.5.2 Be constructed with materials resistant to flood damage;

- 31.5.3 Be constructed by methods and practices that minimize flood damages; and
- 31.5.4 Be constructed with electrical, heating ventilation, plumbing and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- 31.6 WATER SUPPLY AND WASTEWATER DISPOSAL
Where new or replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area, the applicant shall provide the Building Inspector with assurance that these systems will be designed to minimize or eliminate infiltration of the flood waters into the systems and discharges from the system into flood waters, and that on site wastewater disposal systems will be located to avoid impairment of them or contamination from them during periods of flooding.
- 31.7 ELEVATIONS AND FLOODPROOFING
For all new or substantially improved structures located in Zones A or AE, the applicant shall furnish the following information to the Building Inspector:
- 31.7.1 The as-built elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structure contains a basement
- 31.7.2 If the Structure has been floodproofed, the as-built elevation (in relation to NGVD) to which the structure was floodproofed.
- 31.7.3 Any certification of floodproofing.
- 31.8 BUILDING PERMIT TO BE WITHHELD
The Building Inspector shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33, U.S.C. 1334.
- 31.9 ALTERED OR RELOCATED WATERCOURSES
- 31.9.1 In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Board of the New Hampshire Department of Environmental Services and submit copies of such notification to the Building Inspector, in addition to the copies required by N.H. RSA 482-A:31. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Inspector, including notice of all scheduled hearings before the Wetlands Board.
- 31.9.2 The applicant shall submit to the Building Inspector certification provided by a registered professional engineer assuring that the flood carrying capacity of all altered or relocated watercourses can and will be maintained.
- 31.9.3 The Building Inspector shall obtain, review, and reasonably utilize any floodway data available

from federal, state, or other sources as criteria for requiring that all development located in Zone A meet the following floodway requirement:

“No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge.”

- 31.9.4 Along watercourses that have not had a Regulatory Floodway designated or determined by a federal, state or other source, no new construction, substantial improvements, or other development (including fill) shall be permitted in Zone AE on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

31.10 BUILDING PROVISIONS

- 31.10.1 In special flood hazard areas, the Building Inspector shall determine the 100-year flood elevation in the following order of precedence according to the date available:
 - 31.10.1.1 In Zone AE, refer to the elevation date provided in the community’s Flood Insurance Study and accompanying the FIRM or FHBM.
 - 31.10.1.2 In unnumbered A Zones, the Building Inspector shall obtain, review, and reasonably utilize any 100-year flood elevation date available from any federal, state or other source, including date submitted for development proposals submitted to the community (i.e. subdivision and site plan approvals).
 - 31.10.1.3 In Zone AO , the flood elevation is determined by adding the elevation of the highest adjacent grade to the depth number specified on the FIRM or, if no depth number is specified on the FIRM, at least two (2) feet.
- 31.10.2 The Building Inspector’s 100-year flood elevation determination will be used as criteria for requiring in Zones A and E that:
 - 31.10.2.1 All new construction or substantial improvement of residential structure have the lowest floor (including basement) elevated to or above the 100-year flood elevation;
 - 31.10.2.2 All new construction or substantial improvement of non-residential structures have the lowest floor (including basement) elevated to or above the 100-year flood elevations;
 - 31.10.2.2.1 Be flood proofed so that below the 100-year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - 31.10.2.2.2 Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy; and
 - 31.10.2.2.3 Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of

this section.

- 31.10.2.3 All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level; and be securely anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

Recreational vehicles placed on site within Zones a1-30, AH, and AE shall either (i) be on the site for fewer than 180 consecutive days, (ii) be fully licensed and ready for highway use, or (iii) meet all standards of Section 60.3 (b) (1) of elevation and anchoring requirements for “manufacture homes” in paragraph (c) (6) of the Section 60.3.

- 31.10.2.4 For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted, provided they meet the following requirements:
- 31.10.2.4.1 The enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage;
- 31.10.2.4.2. The area is not a basement;
- 31.10.2.4.3 Shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or must meet or exceed the following minimum criteria: (a) a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided; (b) the bottom of all openings shall be no higher than one foot above grade; and (c) openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.
- 31.10.2.4.4 Proposed structures to be located on slopes in special flood areas, Zones AH, AO shall include adequate drainage paths to guide flood waters around and away from the proposed structures.

31.11 VARIANCES AND APPEALS

- 31.11.1 Any order, requirement, decision or determination of the Building Inspector made under these floodplain development regulations may be appealed to the Zoning Board of Adjustment as set forth under N.H. RSA 676.5.
- 31.11.2 In determining whether or not any variance to these provisions will be contrary to the spirit of this Ordinance, the Board of Adjustment shall consider the following:
- 31.11.3 The Zoning Board of Adjustment shall notify the applicant in writing that: (I) The issuance of a

variance to construct below the base flood level will result in increased premium rates for insurance up to amounts as high as \$25 for \$100 of insurance coverage and (II) Such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.

- 31.11.2.1 The variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense:
- 31.11.2.2 That if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result; and
- 31.11.2.3 That the variance is the minimum necessary , considering the flood hazards, to afford relief.
- 31.11.3 The Town shall maintain a record of all variance actions, including their justification for their issuance, and report such variances issued on its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

ARTICLE 32

32.0 WIRELESS TELECOMMUNICATIONS FACILITIES OVERLAY DISTRICT

- 32.1 **PURPOSE AND INTENT:** It is the express purpose of this Article to restricts the location of wireless telecommunications facilities within the Town of Weare consistent with appropriate land use regulation that will ensure compatibility with the visual and environmental features of the Town. Compatibility with the visual features of Weare is measured based on the change in community scale and character in relation to the height, mass, materials, contrasts, or proportion within the surroundings of a proposed facility. This Article enables the review of the locating and siting of such facilities by the Town so as to eliminate or mitigate their visual and environmental impacts. It is the intent of this Article to encourage carriers to locate on existing buildings and structures whenever possible. New ground mounted wireless telecommunications facilities are permitted, but only when the use of existing structures and buildings is found to be infeasible. Co-location is encouraged for all such facilities, and their review shall be on the basis of the site being built using all positions on the mount.
- 32.2 **APPLICABILITY:** This Article shall apply to wireless communications facilities proposed to be located on property owned by the Town of Weare, on privately owned property, and on property that is owned by any other governmental entity that acts in its proprietary capacity to lease such property to a carrier.
 - 32.2.1 **Amateur Radio: Receive-Only Antennas:** This Article shall not govern any tower, or the installation of any antenna, that is under 70 feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive-only antennas. This ordinance adopts the provisions and limitations as referenced in RSA 674:16, IV.

32.2.2 Essential Services and Public Utilities: Wireless telecommunications facilities shall not be considered infrastructure, essential services or public utilities. Siting for wireless telecommunication facilities is a use of land is addressed by this Article 32.

32.3 **DEFINITIONS:** For the purpose of this Article, the following terms shall have the meaning given:

Antenna: An apparatus designed for communications through the sending and/or receiving of electromagnetic waves of any bandwidth.

Antenna Array: A collection of antennas attached to a mount.

Average Tree Canopy Height: An average height found by inventorying the height of all trees over 20 feet high for a defined area.

Camouflaged: A wireless communications facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure.

Carrier: A company that provides wireless telecommunications services. Also sometimes referred to as a provider.

Co-location: The use of a single mount on the ground by more than one carrier or provider or the same carrier or provider with multiple licenses, and/or the use of several mounts on an existing building or structure by more than one carrier or the same carrier with multiple licenses.

Equipment Shelter: An enclosed structure, cabinet, shed, vault, or box near the base of the mount within which are housed equipment for wireless telecommunications service facilities, such as batteries and electrical equipment. Equipment shelters are sometimes referred to as base transceiver stations.

Guyed Tower: A monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.

Height: When referring to a tower or other structure, the distance measured from the natural grade of a site to the highest point on the tower or other structure, even if said highest point is an antenna.

Lattice Tower: A type of tower with multiple legs and structural cross-bracing between the legs that is self-supporting and free-standing.

Mast: A thin pole that resembles a street light standard or a telephone pole. A dual-polarized antenna is typically deployed on a mast.

Monopole: A thicker type of tower than a mast that is self-supporting with a single shaft of wood, steel or concrete, or other material, that is designed for the placement of antennas and arrays along the shaft.

Mount: The structure or surface upon which antennas are mounted, including four types of mounts:

- a. Roof-mounted: mounted on the roof of a building
- b. Side-mounted: mounted on the side of a building
- c. Ground-mounted: mounted on the ground
- d. Structure-mounted: mounted on a structure other than a building

Scenic Vistas: Those areas designated by the Planning Board and on file at the Selectmen's Office at the time any application under this ordinance is submitted.

Security Barrier: A wall, fence or berm that restricts an area from unauthorized entry or trespass.

Tower: Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guyed towers or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like.

Wireless Telecommunications Facilities: Any antenna, tower or other structure, including an equipment shelter, which is intended for use in connection with the transmission or reception of radio or television signals or any other electromagnetic spectrum-based transmissions/receptions.

32.4 DISTRICT REGULATIONS

32.4.1 Location: Wireless telecommunications facilities shall be permitted in all zoning districts, except that they shall be prohibited within 150 feet of town or state roads and within 300 feet of a scenic road or siting in a manner which is readily visible from a scenic road or within a scenic vista. Applicants seeking approval for such facilities shall first evaluate existing structures for siting such facilities. Only after finding that there are no suitable existing structures pursuant to Section 32.4.3 shall an applicant propose a new ground-mounted facility.

32.4.2 Existing Structures: Policy - Wireless telecommunications facilities shall be located on existing structures, including but not limited to buildings, water, towers, existing telecommunications facilities, utility poles or towers, and related facilities, provided that such installation preserves the character and integrity of those structures.

32.4.3 Existing Structures: Burden of Proof - The applicant shall have the burden of proving that there are no existing structures which are suitable to locate its facilities and/or transmit or receive electromagnetic signals. To meet the burden, the applicant shall take all the following actions to the extent applicable:

- a. The applicant shall submit to the Planning Board a list of all contacts made with owners of potential sites regarding the availability of potential space for a wireless telecommunications facility. If the Planning Board informs the applicant that additional existing structures may

be satisfactory, the applicant shall contact the property owner(s) of those structures.

- b. The applicant shall provide copies of all letters of inquiry made to owners of existing structures and letters of rejection. If letters of rejection are not provided, at a minimum, unanswered "Return Receipt Requested" forms from the U.S. Postal Service shall be provided for each owner of existing structures that was contacted.
- c. If the applicant claims that a structure is not capable of physically supporting a wireless telecommunications facility, this claim must be certified by a licensed professional civil engineer. The certification shall, at a minimum, explain the structural issues and demonstrate that the structure cannot be modified to support the facility without unreasonable costs. The estimated cost shall be provided to the Planning Board.

32.4.4 Ground-Mounted Facilities: Policy - If the applicant demonstrates that it is not feasible to locate on an existing structure, ground-mounted wireless telecommunications facilities shall be designed so as to be camouflaged to the greatest extent possible, including but not limited to using compatible building materials and colors, screening, landscaping, and placement within treed areas.

32.5 **USE REGULATIONS:** A wireless telecommunications facility shall require a building permit in all cases and may be permitted as follows:

32.5.1 Existing Tower Structures: Carriers may locate a wireless telecommunications facility on any guyed tower, lattice tower, mast, or monopole in existence prior to the adoption of the Article, or on any wireless telecommunications facility previously approved under the provisions of this Article, so long as the co-location complies with the approval site plan. All the performance standards of this Article shall be met. This provision shall apply only so long as the height of the mount is not increased, a security barrier already exists and the area of the security barrier is not increased. Otherwise, site plan review is required.

32.5.2 Reconstruction of Existing Tower Structures: An existing guyed tower, lattice tower, mast or tower, mast or monopole in existence prior to the adoption of this Article may be reconstructed with a maximum 20 foot increase in height so as to maximize co-location so long as the standards of this Article are met and so long as the 20 foot increase in height does not cause a facility previously existing to exceed the average tree canopy height by more than 25 feet in height. The mount shall be replaced with a similar mount that does not significantly increase the visual impact on the community. Site plan review is required.

32.5.3 Existing Structures: Subject to the provision of this Article and site plan review and except as otherwise prohibited under Section 32.6, a carrier may locate a wireless telecommunications facility on an existing structure, building, utility tower or pole, or water tower.

32.5.4 Ground-Mounted Facility: A wireless telecommunications facility involving construction of a ground mount shall require site plan review and be subject to the provisions of this Article.

- 32.6 **DIMENSIONAL REQUIREMENTS:** Wireless telecommunications facilities shall comply with the following requirements:
- 32.6.1 Height, Maximum: In no case shall a wireless telecommunications facility exceed 10 feet over the average tree canopy height within a 150 foot radius of the mount, security barrier, or designated clear area for access to equipment, whichever is greater; provided, however, that if there are insufficient trees to calculate the average tree canopy height within that area, the maximum height shall not exceed 20 feet. The Planning Board may consider a 15 foot extension provided that the applicant can demonstrate the technical necessity of such extension and provided that the performance and design standards of Section 32.7 are met. The applicant will pay the Town to hire an independent qualified radio frequency engineer to substantiate the applicant's claim of technical necessity. Technical considerations include, but are not limited to, the availability of alternative sites, co-location and improved reception and coverage within the Town. The Planning Board shall not grant the extension for a siting within scenic vistas designated by the Planning Board.
- 32.6.2 Height, Existing Structures and Utility Poles: New wireless telecommunications facilities located on water towers, electric transmission and distribution towers, utility poles and similar existing utility structures, guyed towers, lattice towers, masts and monopoles may be permitted with no increase in height.
- 32.6.3 Height, Other Existing Structures: The height of a wireless telecommunications facility shall not increase the height of a structure unless the facility is completely camouflaged; for example, a facility completely within a flagpole, steeple, or chimney. The increase in height of the structure shall be in scale and proportion to the structure as originally configured. A carrier may locate a wireless telecommunications facility on a building that is legally nonconforming with respect to height, provided that the provisions of this Article are met.
- 32.6.4 Setbacks: All wireless telecommunications facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located.
- 32.6.5 Fall Zone for Ground Mounts: In order to ensure public safety, the minimum distance from the base of any ground mount of a wireless telecommunications facility to any property line, public road, habitable dwelling, business or institution, or public recreational area shall be, at a minimum, the distance equal to the height of the facility.
- 32.7 **PERFORMANCE AND DESIGN STANDARDS:** These standards shall apply to all applications.
- 32.7.1 Visibility
A. Visual impacts are measured on the basis of:
1. change in community scale, as exhibited in relative height, mass or proportion of the wireless telecommunications facility within their proposed surroundings

2. new visible elements set against contrasting background
3. different colors and textures contrasting against the existing background
4. use of materials that are foreign to the existing built environment within their proposed surroundings creating visual blight.

B. Enhancements are measured on the basis of:

1. conservation of opportunities to maintain community scale, e.g. buffering areas and low-lying buildings should not be compromised so as to start a trend away from existing community scale
2. amount and type of landscaping and/or natural vegetation
3. continuation of existing colors, textures and materials

C. Visibility focuses on:

1. eliminating or mitigating visual impact
2. protecting, continuing and enhancing the existing environment

D. Camouflage for Facilities on Existing Buildings or Structures- Roof Mounts: When a wireless telecommunications facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal or camouflage the facility within or behind existing or new architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front facade in order to limit their impact on the building's silhouette.

E. Camouflage for Facilities on Existing Buildings or Structures - Side Mounts: Wireless telecommunication facilities which are side-mounted shall blend with the existing building's architecture and, if individual antenna panels are over 5 square feet, the panels shall be painted or shielded with material consistent with the design features and materials of the building.

F. Camouflage for Ground-Mounted Facilities: All ground-mounted wireless telecommunications facilities shall be surrounded by a buffer of dense tree growth that extends continuously for a minimum distance of 50 feet from the mount, security barrier, or designated clear area for access to equipment, whichever is greatest, and screen views of the facilities in all directions. The buffer shall be in keeping with the surrounding vegetation and shall effectively screen the facilities 365 days a year. The buffers shall be on the subject property, protected by a landscape easement or be within the area of the carrier's lease. Any easement or lease shall specify that the trees within the buffer shall not be removed or topped, unless the trees are dead or dying, present a hazard to persons or property, or as approved during the site plan review.

32.7.2 Color: To the extent that any component of a wireless telecommunications facility extends above the height of the vegetation immediately surrounding it, it shall be a color that blends with the background of surroundings, including guy wires.

32.7.3 Equipment Shelters: Equipment shelters for wireless telecommunications facilities shall be designed consistent with one of the following design standards:

- A. equipment shelters shall be located in underground vaults; or
- B. equipment shelters shall be designed so that the shelters are architecturally consistent, with respect to materials and appearance, to the buildings in the area of the wireless telecommunications facility; or
- C. equipment shelters shall be camouflaged behind an effective year round landscape buffer, equal to the height of the proposed building, and/or wooden fence. The Planning Board shall determine the style of fencing and/or landscape buffer that is compatible with the neighborhood; or
- D. if mounted on a roof top, the equipment shelter shall be concealed or camouflaged so that the shelter either is not visible at grade or appears to be a part of the original structure.

With respect to each design standard, all utilities to the site shall be underground.

32.7.4 Lighting, Signage and Security:

A. Lighting

- 1. The mounts of the wireless telecommunications facility shall be lighted only if required by the Federal Aviation Administration.
- 2. Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties. Foot-candle measurements at the property line shall be 0.00 initial foot candles.

B. Signage: Signs shall be limited to those needed to identify the property and the owner and warn of any danger. All signs shall comply with the requirements of the Weare sign ordinance.

C. Security Barrier: A security barrier is required for all wireless telecommunications facilities.

32.7.5 Scenic Landscapes and Vistas: Wireless telecommunications facilities shall not be located with scenic vistas or within open areas that are visible from public roads, recreational areas or abutting properties. All ground-mounted facilities shall be surrounded by a buffer of dense tree growth, pursuant to section 32.7.1 (F).

32.7.6 Driveways: Existing entrances and driveways to serve a wireless telecommunications facility shall be utilized, unless the applicant can demonstrate that a new entrance and driveway will result in less visual, traffic and environmental impact. New driveways shall not exceed 12 feet width.

32.7.7 Antenna Types: Any antenna array placed on an existing or proposed ground mount, utility pole or transmission line mount shall have a diameter of no more than 4 feet, exclusive of the diameter of the mount, unless the Planning Board finds a larger antenna array does not materially impair, the visual impact of the siting.

32.7.8 Ground and Roof Mounts: All ground mounts shall be on a mast-type or monopole type mount. Lattice towers, guyed towers, and roof-mounted monopoles are expressly prohibited, unless constructed as part of a reconstruction project permitted under section 32.5.2.

32.7.9 Radio Frequency Radiation (RFR) Standards: All equipment proposed for a wireless telecommunications facility shall be fully compliant with the FCC Guidelines for Evaluating the Environmental Effects of Radio Frequency Radiation (FCC Guidelines), under Report and Order, FCC 96-326, published on August 1, 1996, and all subsequent amendments.

32.8 MONITORING AND MAINTENANCE:

32.8.1 Maintenance: The owner of the wireless telecommunications facility, shall maintain the facility in

good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, and maintenance of the buffer area and landscaping.

32.8.2 Monitoring: As part of the issuance of the site plan approval or building permit, the property owner and the carrier shall agree that the Town of Weare may enter the subject property to obtain RFR measurements at the expense of the carrier. The Town shall provide reasonable written notice to the property owner and the carrier and provide them the opportunity to accompany the Town representatives when the measurements are conducted.

32.8.3 Security for Removal: Recognizing the hazardous situation presented by abandoned and unmonitored wireless telecommunications facilities, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned telecommunications facilities in the event that the facility is abandoned and the facility owner is unwilling or unable to remove the facility in accordance with section 32.9.2. The amount of security shall be based on the removal cost plus 15%, provided by the applicant and certified by an independent professional civil engineer licensed in New Hampshire at the time of application and every 5 years from the date of the Planning Board's approval of the site plan. If the cost has increased more than 15%, then the owner shall provide additional security in the amount of the increase. It shall be a condition of any approval granted under this ordinance that the name and address of the facility owner shall be accurately reported to the Town at all times during the life of the facility. All transfers of ownership shall be reported in writing to the Town before such transfers occur.

32.9 ABANDONMENT OR DISCONTINUATION OF USE

32.9.1 Notification: At such time that a carrier plans to abandon or discontinue operation of a wireless telecommunications facility, such carrier will notify the Town by certified US mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than 30 days prior to abandonment or discontinuation of operation. In the event that a carrier fails to give such notice, the wireless telecommunications facility shall be considered abandoned upon such discontinuation of operations.

32.9.2 Removal: The owner of the facility shall physically remove the wireless telecommunications facility within 90 days from the date of abandonment or discontinuation of use. Physically remove, shall include, but not be limited to:

- A. removal of antennas, mount, equipment shelters and security barriers from the subject property
- B. proper disposal of any waste materials from the site in accordance with local and state solid

waste disposal regulations

C. restoring the location of the facility to its natural condition, except that any landscaping and grading shall remain in the after-condition

32.9.3 Failure to Remove: If the owner of the facility does not remove the facility on the order of the Board of Selectmen, then the Board shall, after holding a public hearing with notice to the owner and abutters, issue a declaration of abandonment. The owner of the facility shall dismantle and remove the facility within 90 days of receipt of the declaration of abandonment. If the abandoned facility is not removed within 90 days, the Town may execute the security to pay for this action. The carrier shall be fined \$100.00 per day starting the 91st day after the declaration until the facility is removed.

32.10 **ADMINISTRATION AND ENFORCEMENT**: It shall be the duty of the Board of Selectmen, or the Building Inspector as its designee, to initiate immediate steps, to enforce this Article upon well-founded information of any violation thereof, by issuing due notice to cease and desist such violation and taking such necessary action as may be permitted by statute for both criminal and civil enforcement of the same including, but not limited to, seeking a civil fine of \$100.00 per day for each day the violation continues after the owner has been notified of that violation; provided, however, that the failure by the Board to initiate enforcement under this Article will not constitute a waiver of the Town's right to take such action.

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Revised: March 1998
Revised: March 1999
Revised: March 2000
Revised: March 2002
Revised: March 2003
Revised: March 2004

A true copy, Attest: _____ Clerk of Weare, NH dated _____, 2004.